

A DIGEST OF
STATE AIR POLLUTION LAWS
1967 EDITION

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STATE AIR POLLUTION CONTROL LEGISLATION

	CONTROL	LOCAL OPTION	TAX INCENTIVES
Alabama			
Alaska	X		
Arizona	X*	X	
Arkansas	X		
California	X	X	X
Colorado	X	X	
Connecticut	X	X	X
Delaware	X		
District of Columbia	X		
Florida	X	X	X
Georgia	X	X	X
Hawaii	X	X	
Idaho	X	X	X
Illinois	X	X	X
Indiana	X	X	X
Iowa	X	X	
Kansas	X	X	
Kentucky	X	X	
Louisiana	X		
Maine			
Maryland	X	X	
Massachusetts	X	X	X
Michigan	X	X	X
Minnesota	X	X	X
Mississippi	X	X	
Missouri	X	X	
Montana	X	X	X
Nebraska		X	
Nevada	X	X	
New Hampshire	X		X
New Jersey	X	X	X
New Mexico	X	X	
New York	X	X	X
North Carolina	X	X	X
North Dakota	X		
Ohio	X	X	X
Oklahoma	X	X	
Oregon	X	X	X
Pennsylvania	X	X	
Rhode Island	X		X
South Carolina	X	X	X
South Dakota			

*Limited Coverage

	CONTROL	LOCAL OPTION	TAX INCENTIVES
Tennessee	X	X	
Texas	X	X	
Utah	X	X	
Vermont			
Virginia	X	X	
Washington	X	X	X
West Virginia	X	X	X
Wisconsin	X	X	X
Wyoming	X		X
Guam			
Puerto Rico			
Virgin Islands	X		

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Alabama 1/

The following things, conditions and acts, among others, are declared to be public nuisance per se, menacing public health and unlawful: (§ 75).

Such....acts, things or conditions as may from time to time be by the rules and regulations of the State board of health declared to be public nuisances per se menacing public health. (§ 75(5)).

The ownership, possession, management, control, maintenance, permitting or use of any of the things or conditions described or referred to....in any rule or regulation adopted under subdivision 5 of this section. (§ 75(6)).

The conducting of a business, trade, industry, or occupation, or the doing of a thing, not inherently unsanitary or a menace to public health in such a manner as to make it a menace or likely to become a menace to public health. (§ 75(7)).

Any such nuisance shall be abated by the county board of health..... (§ 76).

1/ Citations in this Digest refer to Code of Alabama, Recompiled 1958, Title 22.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Alaska 1/

1. Air Pollution Control

ENABLING AUTHORITY: While there is no specific reference to atmospheric pollution in the statutory enumeration of powers of the Board of Health, power to regulate atmospheric pollution is derived from ACLA § 40-1-6 (b), (c), as amended, Chapter 56, Laws 1951, § 1, page 150:

The Board is empowered, directed and authorized to adopt, promulgate, repeal and amend rules and regulations not inconsistent with existing law, relating to and providing for:...(c) regulation of sanitation and sanitary practices in the interest of public health.....

AIR POLLUTION CODE: The following provisions were adopted by the Board effective on or before July 28, 1959 (effective date of Alaska Administrative Procedure Act)

I. GENERAL STATEMENT 2/

A. Purpose

The policy of the State of Alaska is to maintain reasonable standards of atmospheric purity consistent with the protection of human, animal or plant life and property and to require the use of all known available and reasonable methods to control air pollution in the State (§ 601).

B. Definition

"Atmospheric pollution includes, but is not limited to emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts which constitute a nuisance, a danger to public health, or impair the public comfort and convenience" (§ 600(b)).

1/ Citations in this Digest refer to Alaska Compiled Laws Annotated 1949.

2/ Citations refer to "Alaska Air Pollution Code."

II. ADMINISTRATIVE ORGANIZATION

A. Commissioner of Health and Welfare

The Commissioner of Health and Welfare administers the air pollution control program. He is empowered to "enlist the aid of and cooperate with representatives of local, State and Federal governmental agencies and units charged with matters relating to atmospheric pollution," and of "representatives of private industry which may be affected" (§ 601(a) and (b); § 601(d)).

B. Powers of the Commissioner

The Commissioner has jurisdiction to abate and prevent atmospheric pollution, including power:

- (1) To hold public hearings on 60 days notice, compel attendance of witnesses, "make findings of fact and determinations" and assess penalties for violations of these regulations and the Health and Safety Code (§ 601(c)(1));
- (2) After public hearing, to adopt and make public allowable air quality standards, based on the criteria of the public health, safety, and welfare (§ 601(c)(2));
- (3) After public hearing, to make, modify, or alter orders requiring the discontinuance of pollution practices in excess of the established standards, specifying time for and conditions of compliance (§ 601(c)(3));
- (4) To conduct investigations, and to "enter at all reasonable times in or upon any property....for the purpose of inspecting and investigating conditions relating to atmospheric pollution" (§ 601(c)(7) and § 601(f));
- (5) To institute legal proceedings in court to compel compliance with the regulations or the Commissioner's determinations and orders (§ 601(c)(4));
- (6) To bring proceedings in the name of the State to abate the production of air pollution which causes such injury to human, plant or animal life as to constitute a public nuisance. If the person complained against does not choose to comply, he is entitled to a hearing before the Commissioner after which the Commissioner may enter an order which becomes final unless appeal to the courts is made within twenty days (§ 601(g) and (h));

- (7) To settle or compromise any action or cause of action for the recovery of a penalty under these regulations (§ 601(c)(8));
- (8) After public hearing, to require, issue, continue in effect, or deny permits for the prevention or abatement of atmospheric pollution or the installation or operation of equipment to prevent atmospheric pollution (§ 601(c)(5));
- (9) To revoke or modify any permit issued if, after public hearing, he deems revocation or modification necessary to control atmospheric pollution (§ 601(c)(6));
- (10) To require submission of plans for atmospheric pollution control by any industrial establishment, community, or public or private property subdivision or development (§ 601(c)(10));
- (11) To represent Alaska for the receipt of moneys for the purpose of air pollution control studies or research, and to expend the same, after appropriation therefor (§ 601(c)(9));
- (12) To prepare guides or other material to help develop a comprehensive program of atmospheric pollution control; and
- (13) To perform such other acts as may be necessary to carry out his responsibilities in preventing air pollution (§ 601(c)(11)).

G. Penalty

Violation of the regulations is a misdemeanor, punishable by fine of up to \$500 or imprisonment up to one year, each day the violation continues constituting a separate offense (§ 601(i)).

2. Radiation

In 1959, the Department of Fish and Game of Alaska was directed to initiate and pursue continuing studies, particularly with respect to, inter alia, the protection of airspace from pollution, as to the need for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear, by-product, and radioactive materials, from the operation in Alaska of production or utilization facilities, and from the generation of radiation, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it as may appear necessary and appropriate (§ 40-2B-4(7)).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Arizona 1/

1. Division of Air Pollution Control

I. POLICY STATEMENT

It is the public policy of this state to preserve, protect, and improve the air resources of this state in order to promote health, safety and welfare, prevent injury to human health, and to plant and animal life, foster the comfort and convenience of its inhabitants and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the state. In order to attain the objectives of this public policy, it is therefore declared that the prevention and abatement of air pollution is a matter of state-wide concern and the provisions of this act shall apply to all persons and all lands located within the state.

II. DEFINITIONS

Air pollution "the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant or animal life, or property".

"Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, mist, odors, particulate matter, windborne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

"Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person (§ 36-771).

III. ADMINISTRATIVE ORGANIZATION

Establishes within the Department of Health a Division of Air Pollution Control, to be headed by a Director appointed by the State Health Commissioner (§ 36-1702).

1/ Citations refer to Arizona Revised Statutes Annotated.

An Air Pollution Control Advisory Council shall be appointed by the Governor to advise and consult with the Board of Health, the Department, and the Division, in effectuating the purposes of this chapter. The Council shall consist of one member of the Board of Health and 15 members knowledgeable in the field of air pollution, including at least one member representative of each of the following: County health departments, agriculture, industry, mining, construction contractors, public utilities, tourism, transportation, and incorporated cities and towns, and at least five representatives of the general public. Advisory Council members serve without pay. (§ 36-1703).

The Governor shall appoint an Air Pollution Control Hearing Board, to consist of five members, one member of which shall be a practicing lawyer and one a registered professional engineer. (§ 36-1704).

IV. POWERS AND DUTIES

A. Generally to:

- (1) Determine whether the meteorology of the state is such that air sheds can be reasonably identified and air pollution, controlled by establishing districts within defined geographical areas;
- (2) Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures, and other matters necessary to arrive at a better understanding of air pollution and its control;
- (3) Determine the limits on atmospheric concentrations of air contaminants necessary to protect the public health;
- (4) Conduct necessary and reasonable investigations, inspections and tests;

Arizona -- Continued

- (5) Hold hearings, and compel the attendance of witnesses and the production of records;
- (6) Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state;
- (7) Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes set forth herein; and
- (8) Encourage political subdivisions to handle air pollution problems within their respective jurisdictions (§ 36-1705).

B. State and County Jurisdiction

The Division has jurisdiction to act where the hearing board, after a hearing requested by the Division, determines that reasonable time has been allowed for county action and that any of the following conditions exist:

- (1) an air pollution source is contaminating the atmosphere beyond the territorial limits of the county in which located;
- (2) the county in which the source is located has failed to avail itself of the provisions of Article 8, Chapter 6, Title 36; or
- (3) the county specifically requests the Division to assume jurisdiction. Any corrective action taken by the Division shall be at the expense of the county (§ 36-1706).

C. Rules and Regulations

The Division may adopt necessary and feasible rules and regulations to control air pollution. No rule or regulation may be adopted or amended until after public hearing by the Board of Health. No rule or regulation shall specify the type or design of equipment to be used in reducing the release of air contaminants (§ 36-1707).

V. RIGHT OF ENTRY; PRODUCTION AND CONFIDENTIALITY OF RECORDS

An employee or representative of the Division may enter and inspect any property, premises or place other than homes suspected of violating any rule or regulation adopted pursuant to this chapter. The director, having reasonable cause to believe a violation is being committed, may request the violator to produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with any rule or regulation. Records or other information furnished to or obtained by the Director relating to production or sales figures or to the processes of production unique to the owner or operator or which may adversely affect his competitive position, shall be kept confidential (§ 36-1708).

VI. VIOLATIONS; HEARINGS; ORDERS FOR ABATEMENT

A notice of violation shall be served upon the violator personally or by registered or certified mail. The notice shall state with particularity the act constituting the violation, the rule or regulation being violated, and shall require a written response from such person setting forth the nature of the time needed for corrective action (§ 36-1709). A reasonable time shall be allowed for compliance. After such time the Director may request a hearing by the hearing board to determine if the act set forth in the notice constitutes a violation (§ 36-1710). If, after notice of hearing, (§ 36-1714), the hearing board determines that the act constitutes a violation, that no variance is justified, and that reasonable time has been allowed for compliance, the Board shall issue an order for abatement (§ 36-1711).

Notice of hearing shall be given by publication at least twice in a daily newspaper published and circulated in the locality concerned or, if there is no daily newspaper, then twice in a weekly or semi-weekly newspaper (§ 36-1714(A)).

VII. VARIANCES

A person at any time may request the hearing board to conduct a hearing to determine whether to grant such person a variance from any rule or regulation. Variances granted shall not exceed one year but may be extended by application to the hearing board (§ 36-1712).

VIII. DECISIONS; SUBPOENAS; TIME LIMITATIONS

Decisions of the hearing board shall be in writing and shall be of public record. The chairman or vice chairman may issue subpoenas to compel attendance and require the production of evidence. Unless a rehearing is granted or in the absence of an emergency justifying an earlier effective date, hearing board decisions become effective not less than 30 days after issuance. (§ 36-1713).

IX. INJUNCTIVE RELIEF

Upon failure or refusal of a person to comply with an abatement order of the hearing board, the Director may file an action in the county's superior court to restrain and enjoin the person from engaging in further acts of violating the abatement order (§ 36-1715).

X. APPEALS BY WRIT OF CERTIORARI

A person aggrieved by a decision of the hearing board, or the Director, may petition a writ of certiorari for review of the board's decision. The court may, on application, on notice to the board and for good cause shown, grant a restraining order, and on final and full hearing of all evidence, reverse or affirm, wholly or partly, or may modify the decision (§ 36-1716).

XI. STATE ASSISTANCE

The department of health may make studies of the nature, extent, distribution and sources of air pollution, and possible control thereof within any county so requesting and at the expense of such county. In carrying out such studies, the department is authorized to enter into cooperative agreements with public and private agencies, educational institutions and county and municipal governments (§ 36-772).

XII. ACCEPTANCE OF FUNDS OR GRANTS

The State department of health, county health departments, or boards of supervisors may accept and expend funds granted for air pollution research by Federal, State or private agencies, or political subdivisions of the State. (36-776).

XIII. MISCELLANEOUS

Amends Title 36, by adding thereto Chapter 15 (Assumption of Jurisdiction Over Indian Lands), Article 1, which provides that the provisions of law relating to air pollution control shall be applicable to all state lands, including, but not limited to, Indian tribal lands, reservations and allotments (§ 36-1801).

2. County Programs

I. AIR POLLUTION STUDY-BOARD OF SUPERVISORS

A county board of supervisors shall:

- (1) Investigate for air pollution contamination in the county or cooperate with state studies of air pollution in the county; (§ 36-776)
- (2) Investigate the causes, source, extent and degree of air pollution;
- (3) Adopt rules and regulations to abate or prevent air pollution in all its forms, except emissions from motor vehicles;
- (4) Authorize or designate an existing county department, or establish an air pollution control district, to carry out investigations and inspections and to enforce rules and regulations (§ 36-773);
- (5) Establish an air pollution control district (§ 36-774.5).

II. COUNTY HEALTH DEPARTMENT

The county board of supervisors may authorize the county health agency, in cooperation with the state department of health, to study the county air pollution problem and its possible effects on adjoining counties, cooperate with public or private agencies and all other interested persons, and at its discretion, hold hearings (§ 36-774).

III. POWERS AND DUTIES OF AIR POLLUTION CONTROL DISTRICT

A district is granted perpetual succession, and it may sue and be sued in its name, adopt a seal, take, hold, and use land, and dispose of real or personal property within or without the district as may be necessary for carrying out its purposes (§ 36-775).

IV. ADMINISTRATIVE ORGANIZATION

A county board of supervisors may appoint an advisory council to advise and consult with the board, and the air pollution control officer, in effecting the purposes of this article. The council shall consist of one member from the board of supervisors and from 10 to 15 other members, knowledgeable in the field of air pollution, including representatives of groups such as health, agriculture,

industry, mining, construction contractors, public utilities, tourism, and incorporated cities and towns. Council members shall serve for 3-year terms, except that the member from the board of supervisors shall serve at the will of the board of supervisors. (§ 36-777).

A board of supervisors availing itself of its power to investigate or regulate air pollution shall appoint a hearing board. The hearing board shall consist of five members, one a practicing lawyer and one a registered professional engineer. The five members shall be knowledgeable in the field of air pollution and shall serve for 3-year terms. (§ 36-778).

V. PROCEDURES

A. Hearings

- (1) After a reasonable time for compliance the board of supervisors or the control officer may request a hearing by a hearing board to determine if the act set forth in the notice constitutes a violation of the adopted rules or regulations (§ 36-782).
- (2) Notices shall be published in a locally circulated daily newspaper and served personally or by certified or registered mail on the person allegedly violating any rule or regulation if such hearing involves a violation. (§ 36-786).
- (3) Decisions of the hearing board shall be in writing and shall be of public record. Subpoenas to compel attendance or the production of evidence at a hearing may be issued by the chairman or in his absence the vice chairman of the board. The hearing board may revoke or modify an order of abatement or a variance only after a hearing. Hearing board decisions become effective not less than thirty days after they are issued unless a rehearing is granted or unless it is determined that an emergency justifies an earlier effective date (§ 36-785).

B. Rules and Regulations

A county board of supervisors may adopt necessary and feasible rules and regulations to control air pollution within the county. Before adoption of any rules and regulations a public hearing must be held. No rule or regulation shall specify the type or design of equipment to be used in reducing emissions. (§ 36-779).

C. Enforcement

- (1) This section authorizes any employee or representative of the board of supervisors to enter and inspect any property, premises or place, suspected of being in violation of any rule or regulation, to ascertain compliance with such rule or regulation. If a violation is suspected, the board of supervisors or control officer may request the production of books, records, and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules and regulations adopted pursuant to this article. All information furnished to or obtained by the board of supervisors or control officer which may in any way adversely affect the competitive position of the owner or operator shall be kept confidential. (§ 36-780).
- (2) The board of supervisors or control officer, having reasonable cause to believe any person is violating any rule or regulation, shall serve a notice of violation. This notice shall state the exact violation being committed and require a written response setting forth the time needed for corrective action. Reasonable time shall be granted for compliance (§ 36-781).
- (3) If the hearing board determines a violation has been committed, that no variance is justified, and that a reasonable time has been allowed for compliance, it shall issue an order for abatement (§ 36-783).

D. Variances

A person may request the hearing board to conduct a hearing to determine whether to grant such person a variance from any adopted rule or regulation. Variances granted shall not exceed one year but may be extended by application to the hearing board. (§ 36-784).

VI. PENALTIES AND RELIEF

Upon a person's failure to comply with an abatement order the county may file an action in the superior court to restrain and enjoin the person from engaging in further acts violating the order. The court shall proceed as in other actions for injunctions. (§ 36-787).

A person aggrieved by a hearing board or county decision may petition for a writ for review of the decision. Allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may grant a restraining order and may reverse, or affirm, wholly or partly, or may modify the decision reviewed (§ 36-788).

VII. UNLAWFUL OPEN BURNING; EXECPTIONS; VIOLATION; PENALTY

It is unlawful for any person to ignite or cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except for fires used for cooking, recreational purposes, the branding of animals; fires set or permitted by any public officer in the performance of official duty; fires set by or permitted by the county agricultural agents; or fires permitted by any rule or regulation issued pursuant to this article or by any variance issued by a hearing board. (§ 36-789)

VIII. LIMITATIONS

Nothing in this article shall be construed so as to:

- (1) grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works, shops, or other properties owned by or under control of the person causing the contamination or pollution;
- (2) alter or in any other way affect the relations between employers and employees; and
- (3) require the readoption of any rule or regulation previously adopted prior to the effective date of this act, provided such rule or regulation is in conformity with the provisions of this article. (§ 36-790)

3. Motor Vehicle Pollution Control

Anyone who operates a motor vehicle without an emissions control device as required or with a device which has been dismantled or disconnected or is otherwise inoperative shall be guilty of a misdemeanor (§ 28-326B8).

Beginning with motor vehicles and motor vehicle engines of the 1968 model year, no certificate of title or registration, including permission to install or exchange blocks or engines, shall be issued, transferred or renewed unless the application is equipped with approved emissions control devices that are both connected and operating (§ 28-327).

Motor vehicles and motor vehicle engines beginning with the 1968 model year shall be equipped with emissions control devices that meet the standards established by the State Board of Health (§ 28-955C).

The Board of Health shall promulgate rules and regulations setting forth standards controlling the release of contaminants from motor vehicles beginning with the 1968 model year. The Board may, upon recommendation of the Division of Air Pollution Control, approve or disapprove designs of emissions control devices for motor vehicles (§ 36-1717).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Arkansas 1/

Air Pollution Control Act

I. GENERAL STATEMENT

Act 183, Laws 1965, changed the name of the Water Pollution Control Commission to the "Arkansas Pollution Control Commission" and gave the Commission new powers to control air pollution. The Commission is empowered to adopt rules and regulations, hold hearings, enter orders, represent the State in negotiations for interstate compacts, and institute court proceedings to compel compliance with the Act and Commission rules, regulations, and orders. Causing air pollution, violating the conditions of a permit, or violating a Commission rule, regulation, or order is a misdemeanor.

The Act is the exclusive means within the State for the control of air pollution.

II. DEFINITIONS

- A. "Air contaminant" means any solid, liquid, gas, or vapor or any combination thereof (§ 82-1933(1)).
- B. "Air pollution" means any solid, liquid, gas or vapor or any of one or more air contaminants in quantities, of characteristics and of duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property or which unreasonably interfere with enjoyment of life or use of property, throughout the State or throughout such area of the State as shall be affected thereby (§ 82-1933(2)).
- C. "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution (§ 82-1933(3)).
- D. "Air Contamination Source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility,

1/ Citations refer to Arkansas Statutes.

Arkansas -- Continued

equipment or other property by which the emission is caused or from which the emission comes (§ 82-1933(4)).

III. ARKANSAS POLLUTION CONTROL COMMISSION

A. Composition and Organization

The Commission consists of 8 members, one designated from and by each of the following: State Board of Health, Game and Fish Commission, Oil and Gas Commission, Soil and Water Conservation Commission, and State Forestry Commission; and three appointed by the Governor representing industry, municipalities, and agricultural and livestock interests. The three members initially appointed serve 2, 4, and 6 year terms; successors are appointed for a 6 year term (§ 82-1903(a)).

State Agency members receive expenses but no additional salary. Appointed members receive \$25 per day and expenses while carrying out Commission duties (§ 82-1903(a)).

A Chairman and Vice-Chairman are elected annually by the Commission from its membership (§ 82-1903(a)).

B. Powers and Duties

The Commission shall have the power or duty:

- (1) To require to be submitted and to approve plans and specifications for disposal systems or any part thereof and to inspect their construction for compliance with the approved plans. (§ 82-1904(7)).
- (2) In any hearing or investigation, a Commission member or employee or agent authorized by the Commission may administer oaths, examine witnesses and issue subpoenas. (§ 82-1904(11)(2)). Such subpoenas may be enforced by the Circuit Courts. (§ 82-1904(11)(3)).
- (3) To develop and effectuate a comprehensive program for the prevention and control of all source of pollution of the air of the State. (§ 82-1935(a)).
- (4) To advise, consult and cooperate with other agencies of the State, political subdivisions, industries, other states, the federal government and with affected groups in furtherance of the purposes of this Act. (§ 82-1935(b)).

- (5) To encourage and conduct studies, investigations and re-search relating to air pollution and its causes, prevention, control, and abatement, as it may deem advisable and necessary, and, after notice and a public hearing, establish reasonable air purity standards for areas of the State consistent with the intent of this Act. (§ 82-1935(c)).
- (6) To collect and disseminate information relative to air pollution, its prevention and control. (§ 82-1935(d)).
- (7) To consider complaints, make investigations and hold hearings. (§ 82-1935(e)).
- (8) To encourage voluntary cooperation by the people, municipalities, counties, industries and others in preserving and restoring the purity of air within the State. (§ 82-1935(f)).
- (9) To administer and enforce all laws and regulations relating to pollution of the air. (§ 82-1935(g)).
- (10) To represent the State in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control. (§ 82-1935(h)).
- (11) To cooperate with and receive moneys from the federal government or any other source for the study and control of air pollution, and the Commission is designated as the official State air pollution control agency for such purposes. (82-1935(i)).
- (12) To adopt rules requiring a permit for the construction or operation of any equipment which will cause the emission of air contaminants, and to revoke, modify, or deny such permits. Permits shall be issued upon application, to all equipment in operation at the time the rule takes effect and may be revoked only upon notice and hearing. (§ 82-1935(j)).
- (13) To make, issue, modify, revoke, and enforce orders prohibiting, controlling or abating air pollution, and requiring the adoption of remedial measures to prevent, control or abate air pollution. (§ 82-1935(k)).

- (14) To formulate and promulgate, amend, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the Commission under this Act to control air pollution. (§ 82-1935(1)).
- (15) To adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations requiring the registration of and the filing of reports by persons engaged in operations which may result in air pollution. (§ 82-1935(m)).
- (16) To institute court proceedings to compel compliance with the provisions of this Act and rules, regulations, and orders issued pursuant thereto. (§ 82-1935(n)).
- (17) To exercise all of the powers in the control of air pollution as are granted to the Commission for the control of water pollution under Part 1 of this Act. (§ 82-1935(o)).
- (18) To enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations. (§ 82-1905(3)).

C. Jurisdictional Limitation

- (1) The provisions of this Act do not apply to: agricultural operations and equipment; residential barbecue equipment or outdoor fireplaces; land clearing and grading operations; road construction operations and the use of portable equipment therein; incinerators and heating equipment in residences used by 4 or fewer families; fires set with official sanction for weed abatement, elimination of a fire hazard, or instruction in fire fighting or civil defense. (§ 82-1934(1)-(7)).
- (2) Nothing contained in the Act shall be construed to amend or repeal Arkansas Statutes, Secs. 82-1512 et seq., concerning radiation control, or to grant the Commission jurisdiction with respect to air conditions solely within any plant, works, or shop or with respect to employer-employee relationships. (§ 82-1942).

IV. DIRECTOR

The Commission is directed to appoint a Director to handle correspondence, make and arrange inspections and investigations, and prepare reports and data as directed by the Commission. He is the executive officer and active administrator of all air pollution control activities and has other duties as directed and authorized by the Commission. (§ 82-1903(b)).

V. TECHNICAL SECRETARY

The Chief Sanitary Engineer of the State Board of Health shall serve as Technical Secretary of the Commission and shall advise and cooperate with the Commission and staff in technical and scientific matters. He receives no additional compensation, and attends Commission meetings but has no vote. (§ 82-1903(c)).

VI. PROCEDURE

A. Hearings

- (1) Upon Commission determination that there are reasonable grounds to believe that there has been a violation of the Act or Commission order, rule, or regulation, it may give written notice to the alleged violator specifying the causes of complaint. The notice shall require correction of the matters complained of or that the violator appear and answer the charges before the Commission on no less than 10 days notice. (§ 82-1906(1)(a)).
- (2) Hearings may be conducted by the Commission or its authorized officer, member, or agent. (§ 82-1906(1)(b)).
- (3) Upon a Commission finding of an emergency an order may be issued without a hearing to be effective immediately. (§ 82-1906(1)(c)).
- (4) Any person who is denied a permit or who has a permit revoked or modified may have a hearing, if requested within 30 days. (§ 82-1906(1)(d)).
- (5) No order of general application shall be issued without a public hearing. Any person affected shall be given notice and heard. (§ 82-1906(1)(e)).

B. Variances

The Commission may grant variances from any rule, regulation, or order, upon conditions deemed necessary to protect the public health and welfare, if it finds that strict compliance is inappropriate because of conditions beyond the control of the applicant, or because compliance would be unreasonable, unduly burdensome, or impractical or would cause substantial curtailment or closing down of the operation, or because no alternative facility or method of handling is available. Variances may be limited in time.

Variances may be revoked after a public hearing held on 10 days notice. (§ 82-1939).

C. Confidential Information

Any information relating to secret processes, devices, or methods of manufacture or production obtained by the Commission or its employees shall be kept confidential. Any violation of this section shall constitute a misdemeanor. (§ 82-1937).

VII. FEES

No fees shall be charged by the Commission for permits or for the performance of any of its functions under this Act. (§ 82-1935(j)).

VIII. JUDICIAL REVIEW

- A. Appeal may be taken to the County Circuit Court from any final order, rule, regulation or other final determination of the Commission by any person adversely affected. (§ 82-1906(3)).
- B. The appeal shall be heard according to the rules governing civil actions, so far as applicable. The court may take additional evidence on any issue, or may try any or all issues de novo, but no jury trial shall be had. (§ 82-1906(7)).
- C. In any appeal or other proceeding involving any order, rule, regulation, or other Commission decision, the action of the Commission shall be prima facie evidence. (§ 82-1906(9)).

IX. PENALTIES

It shall constitute a misdemeanor: knowingly to cause air pollution; to fail to obtain a permit required by Commission regulation, to violate the conditions of a permit, or to operate after a permit has been suspended or revoked; or to violate any Commission rule, regulation, or order, (§ 82-1938(a)-(c)).

Liabilities shall not apply to accidental violations caused by Act of God, war, strike, riot, or other catastrophe, or accidental breakdown of equipment, if promptly repaired.(§ 82-1938(d)).

X. SCOPE AND CONSTRUCTION

A. If any part of this Act is held invalid or unconstitutional, it shall not affect the validity of the rest of the Act. (Part 2, Sec. 11, Act 183, Laws 1965).

B. This Act pre-empts the field of control and abatement of air pollution and contamination and no political subdivision of the State shall enact laws in this field. Nothing in the Act shall be construed to prevent private actions under existing laws. (§ 82-1941).

C. Persons other than the State or Commission shall not acquire actionable right by virtue of this Act. The basis for proceedings that result from violation of any Commission standards, rule, or regulation inures solely to the benefit of the people of the State. It is not intended to create new rights or to enlarge or abrogate existing rights. Commission determinations do not create any presumption or finding for the benefit of any person other than the State. (§ 82-1943).

D. All laws and parts of laws in conflict with this Act are repealed. (Part 2, Sec. 14, Act 183, Laws 1965).

XI. EFFECTIVE DATE

Approved March 10, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

California 1/

In general the 1967 Act abolishes the Motor Vehicle Pollution Control Board, and creates a State Air Resources Board, prescribing its organization, powers, duties and functions to coordinate administration, research, establishment of standards for air conservation activities with the State;

Requires all facilities, including funds, records, equipment and personnel of the Motor Vehicle Pollution Control Board and of the State Vehicular Pollution Laboratory of the State Department of Public Health in Los Angeles over which the Department has control to be transferred to the State Air Resources Board;

Provides for division of State into basins having similar geographical and meteorological conditions by January 1, 1969, and authorizes, but does not require, formation of county air pollution control or regional districts in areas where existing districts are not functioning. Prohibits more than one regional air pollution control district in any basin;

Exempts county or regional districts from the District Reorganization Act of 1965 and the Knox-Nisbet Act;

Permits local or regional authority to adopt standards and rules and regulations more restrictive than those of the State Air Resources Board. Declares that air resources provisions shall not be deemed to affect existing rules and regulations of a district until State Air Resources Board has reviewed such rules and regulations;

Requires, with certain exceptions, that the Board enforce its standards and rules and regulations within areas under the jurisdiction of a local or regional authority, if such local or regional authority does not comply with a directive from the Board where the Board has determined that its standards are not being complied with, or that the local or regional authority's standards are not being complied with, or are inadequate, and the reply of the local or regional authority to a request from the Board for a report on the matter is unsatisfactory. Vests in the Board power to take any appropriate legal action to carry out its responsibilities in such area and also authority to take any action which air pollution control district could take;

1/ Chapter 1545, Laws 1967.

California-- Continued

Makes a violation of standards and rules and regulations prescribed by Board in any area in which the Board is enforcing such standards and rules and regulations a misdemeanor.

Exempts the Bay Area Pollution Control District and Humboldt County from the provisions relating to regional districts but requires such district to file its rules and regulations with the State Air Resources Board;

Deletes provisions requiring the Department of Public Health to maintain a program of air sanitation but requires the department to submit to State Air Resources Board recommendations for ambient air quality standards and requires that standards adopted by the Board relating to health effects be based upon such recommendations;

Distinguishes and defines vehicular and nonvehicular sources of air pollution.

1. State Air Resources Board

The Legislature finds and declares that the people of California have a primary interest in the quality of the physical environment in which they live, and that this environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people. (§ 39010).

It is necessary to provide a means for an intensive coordinated State, regional, and local effort to combat the problems of air pollution by dividing the State into basins based upon similar meteorological and geographical conditions and with consideration for political boundary lines wherever practicable, and to provide for State authority to establish ambient air quality standards as well as Statewide motor vehicle emission standards, and to provide for control of emissions. (§ 39011).

Local and regional authorities have the primary responsibility for the control of air pollution except for emissions from motor vehicles. These authorities are empowered to establish standards more restrictive than those set by the State Board. The State authority shall undertake enforcement activities only after it has determined that the local or regional authorities have failed to meet their responsibilities. Such determination shall only be made after a public hearing has been held for that purpose. (§ 39012).

It is imperative to provide a single State agency for administration, research, establishment of standards, and the coordination of air conservation activities carried on within the State. (§ 39013).

I. DEFINITIONS

"Ambient air quality standards" means specified concentrations and durations of pollutants which reflect the relationship between the intensity and composition of pollution to undesirable effects. (§ 39008.5).

"Emission standards" means specified limitations on the discharge of pollutants into the atmosphere.

"Local or regional authority" includes the governing body of any city, county, city and county, and of any air pollution control district which is functioning and exercising its powers. (§ 39009.5).

II. ADMINISTRATION

- A. The State Department of Public Health shall submit to the State Air Resources Board recommendations for ambient air quality standards reflecting the relationship between the intensity and composition of air pollution and the health, illness, irritation to the senses, and the death of human beings. (§ 425).
- B. The Act creates the State Air Resources Board, to consist of 14 members, 9 of whom shall be appointed by the Governor with the consent of the Senate. The Directors of the Public Health Conservation, Motor Vehicles, Agriculture, and the Commissioner of the California Highway Patrol, shall serve as members of the Board. The Governor shall appoint the chairman from one of the nine appointees. (§ 39020).
- C. Members shall be appointed for a term of four years and shall serve without compensation but shall be reimbursed for necessary travel and other expenses incurred in the performance of their duties. (§ 39021).
- D. The Board shall appoint a 12-member technical advisory committee consisting of physicians, scientists, biologists, chemists, engineers, or meteorologists each of whom has had experience in the field of air pollution. Committee members shall receive \$50 per day for each day they meet plus necessary travel and other expenses incurred while performing their duties. (§ 39022).

- E. The Board shall appoint an executive officer and may contract for services and employ such technical and other personnel and acquire such facilities and may call upon the Department of Public Health as may be necessary for the performance of its powers and duties in carrying out the provisions of this Act. The Board may appoint such advisory groups and committees as it requires to effectuate its purposes. (§ 39023).

III. POWERS AND DUTIES

The Board shall after holding public hearings:

- (1) Divide the State into basins not later than January 1, 1969;
- (2) Adopt standards of ambient air quality for each basin in consideration of the public health, safety and welfare, including but not limited to health, illness, irritation to the senses, aesthetic value, interference with visibility, and effects on the economy; These standards may vary from one basin to another. Standards relating to health effects shall be based upon the recommendations of the State Department of Public Health.
- (3) Adopt standards for the emissions from motor vehicles;
- (4) Adopt rules and regulations in accordance with the provisions of the Administrative Procedure Act necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board;
- (5) Adopt emission standards of all other air pollution sources for application for each basin as found necessary; (§ 39051).
- (6) Conduct studies and evaluate the effects of air pollution upon human, plant, and animal life and the factors responsible for air pollution. The Board may call upon such State agencies it may deem necessary for assistance;

- (7) Encourage a cooperative State effort in combating air pollution;
- (8) Inventory sources of air pollution within the basins of the State and determine the kinds and quantity of air pollutants;
- (9) Monitor air pollutants in cooperation with other agencies;
- (10) Coordinate and collect research data on air pollution;
- (11) Review rules and regulations of local or regional authorities filed with it to assure that reasonable provision is made to control emissions from non-vehicular sources and to achieve the air quality standards established by the Board; (§ 39052) and
- (12) Provide assistance to local and regional agencies in effectuating all the provisions of this Act. (§ 39053).

If the Board finds after investigation and testing that its ambient air quality standards are not being complied with within a basin or that any local or regional authority has not taken reasonable action to control emissions, it may request a report from the local or regional authority as to the action taken to control the sources responsible. If the Board's investigation and testing reveals that its standards are not being complied with, or the local or regional standards are not being complied with or are inadequate, and that the report of the local or regional authority is unsatisfactory, the Board may after holding public hearings, issue a statement of findings, and may direct the local or regional authority, to take further reasonable action. If any local or regional authority does not comply with the directive of the Board within 30 days the Board shall enforce the standards and the rules and regulations adopted by the Board within the area under the jurisdiction of such local or regional authority until such time as the directive is withdrawn by the Board or the local or regional authority complies with the directive. The Board may take any other appropriate legal action to carry out its

responsibilities in such area. The Board shall also have the authority, if such area is within any air pollution control district which is functioning and exercising its powers, to take any action which the district may take. If such area is not within an air pollution control district which is functioning and exercising its powers, the Board shall also have the authority to take any action which a district which is functioning and exercising its powers to take. Every person who violates any standard, rule or regulation adopted by the Board pursuant to this part in any area in which such standards, rules, and regulations are being enforced by the Board is guilty of a misdemeanor. Every day during any portion of which such violation occurs constitutes a separate offense.

The Board is not authorized to enforce in any area under the jurisdiction of any local or regional authority its standards, rules, or regulations relating to emissions from motor vehicles, with respect to motor vehicles registered to owners residing in any area to which the provisions of subdivisions (c) and (d) of section 39090 are made inapplicable by subdivisions (k) or (l) of that section. (§ 39054).

The Board shall be empowered to hold hearings for the purpose of fulfilling the provisions of this division. (§ 39055).

Nothing shall prevent individual counties within a basin from establishing their own county boards while the remaining counties in the same basin establish a regional board. (§ 39056).

Any local or regional authority may establish additional, more strict standards than those set forth by the State Board for all sources of air pollution other than motor vehicles. (§ 39057).

No county, except a county which on the operative date of this section is within an air pollution control district which is functioning and exercising its powers, shall be required to be represented on a regional board, or to have its own board, unless and until the board of supervisors adopt a resolution declaring that there is need for an air pollution control district to function or a resolution is adopted by the board of supervisors of the county and by the board of supervisors of one or more other counties declaring that there is a need for a regional district to function, in a common region including all or any portion of such counties and certified copies of the resolution are filed with the State Air Resources Board. (§ 39059).

The Board is designated as the State air pollution control agency for the purpose of cooperating with the Federal government, (§ 39060), for the purposes of administering any statewide program of financial assistance for air pollution control which may be delegated to it by law and may accept funds from the United States or other source to that end. (§ 39061).

The Board shall submit a report to the Governor and the Legislature not later than 10 days following the commencement of each general session of the Legislature consisting of a summary of the Board's activities during the previous year and the Board's recommendations concerning such legislation and other action necessary for the implementation, financing, and enforcement of this Act. (§ 39062).

All facilities, including but not limited to funds, records, equipment, and personnel of the State Vehicular Pollution Laboratory of the State Department of Public Health in Los Angeles are hereby transferred to the State Air Resources Board. (§ 39063).

The Motor Vehicle Pollution Control Board is abolished. All facilities, including but not limited to funds, records, equipment, and personnel of the Motor Vehicle Pollution Control Board are hereby transferred to the State Air Resources Board. (§ 39064).

All present standards and rules and regulations for the purposes of air pollution control established by the State Department of Public Health and the Motor Vehicle Pollution Control Board shall remain in effect until the State Air Resources Board incorporates them into its rules and regulations or adopts rules and regulations. (§ 39065).

This division shall not be deemed to affect any rule or regulation of any county or regional district which is in effect on the effective date of this division until the State Air Resources Board has reviewed the rules and regulations of the District.

If any district organized and functioning is entirely within any area in which a regional district is created, upon the establishment of the regional district, such district is dissolved and the regional district succeeds to all of its property and obligations.

Every county district Board shall adopt rules and regulations to control the sources of air pollution within the district and shall comply with all the standards, rules and regulations set forth by the State Board.

- (1) The county district Board of any county air pollution control district in existence on the date on which the State Air Resources Board divides the State into basins which has adopted rules and regulations, shall file its rules and regulations with the Board within 30 days after such date.
- (2) The county district Board of any county air pollution control district in existence on such date which has not adopted rules and regulations, shall file its rules and regulations with the State Board within six months after such date.
- (3) The county district Board of any county air pollution control district created after such date shall file its rules and regulations with the State Board within 12 months after creation of the district.

III. REGIONAL DISTRICTS

The Boards of Supervisors of two or more counties within a given basin may upon their own motion, acting separately or shall whenever a petition signed by not less than 10 percent of the electors of each county is presented to the supervisors of that county, hold a public hearing to determine whether or not to become part of a regional air pollution control district.

The Board of Supervisors shall give notice of the time and place of hearing by publication not less than 15 days nor more than 45 days before such hearing.

Upon conclusion of the public hearing the Board of Supervisors may adopt a resolution declaring that there is need for the regional district to function in such county, or portion thereof, if from the evidence received at such hearing it finds that it is in the best interests of such county that the regional district function therein.

From and after the date of the filing of certified copies of resolutions from two or more Boards desiring a common regional district, the regional district shall begin to function and may exercise its powers within any area not within any other district.

There shall be a separate and distinct city selection committee for each county in which the regional district may transact business and exercise its powers. The membership of such committees shall consist of the Mayor of each city within such regional district within the county, which is not within a district, or, where there is no Mayor, the chairman or the president of the city council.

A majority of the members of each city selection committee shall constitute a quorum.

The city selection committee for each county shall meet within 90 days after the adoption of the resolution by the Board of Supervisors to adopt the regional form. The committee of each county shall thereafter meet in May of each even-numbered year for the purpose of making succeeding appointments to the regional Board.

Each committee shall appoint a chairman from among its members and such other officers as may be necessary.

Members of the committees shall serve without compensation, but may be allowed actual expenses incurred in the discharge of their duties.

The Board of Supervisors of a county in which the regional district may transact business and exercise its powers shall appoint one of its members to be a member of the regional Board.

The selection committee of each county shall appoint one member of the regional Board. Such member shall be selected from among the Mayors and city councilmen of the cities within such county.

Members of a regional Board appointed by the Board of Supervisors shall serve for four years, and each member appointed by the city selection committee shall serve for two years.

The regional Board is the governing body of the regional district and shall exercise all the powers of the regional district, except as otherwise provided.

A majority of the members of the regional Board shall constitute a quorum.

Each member of the regional Board shall receive the actual and necessary expenses incurred by him in the performance of his duties, plus a compensation of \$25 for each day attending the meetings of the Board, but such compensation shall not exceed \$600 in any one year.

The regional Board may appoint an executive secretary to perform such duties as may be assigned to him by the Board.

The regional Board may cooperate and contract with any Federal, State, or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of its purposes.

No supervisor, mayor, or city councilman shall hold office on the regional Board for a period of more than three months after ceasing to hold the office of supervisor, mayor, or city councilman, respectively.

IV. POWERS AND DUTIES

The regional district shall have power:

(1) To have perpetual succession.

(2) To sue and be sued.

- (3) To adopt a seal.
- (4) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real or personal property within or without the regional district necessary to the full exercise of its powers.
- (5) To lease, sell or dispose of any property or any interest therein whenever in the judgment of the regional Board such property is no longer required for the purposes of the regional district, or may be leased for any purpose without interfering with the use of the same for the purposes of the regional district.

The regional district shall:

- (1) Establish and execute an effective program for the reduction of air contaminants within the regional district and shall enforce all orders, rules, and regulations prescribed by the State Board relating to the sources of air pollution within its jurisdiction; and
- (2) Do such acts as may be necessary to carry out the provisions of this Act.

The regional Board shall:

- (1) Establish and maintain such offices wherever it deems will best facilitate the accomplishment of the regional objectives.
- (2) Meet at such times and places as decided by the regional Board.
- (3) Appoint a chairman from its members and such other officers as may be necessary.

- (4) Determine the compensation of, and pay, the control officer, all of his personnel, the executive secretary, and members of the hearing board.
- (5) Provide for the number of personnel to be employed by the control officer and for their duties and the times at which they shall be appointed.

In exercising its powers and duties, the regional district shall, whenever feasible, secure necessary technical, administrative and operational services by contract with public agencies to the end that duplication of similar services and facilities is avoided to the extent possible.

V. RULES AND REGULATIONS

The regional Board shall adopt and may, from time to time, amend rules and regulations, including, but not limited to, rules and regulations establishing standards to implement this Act. Such rules and regulations shall be based on surveys and studies made by the regional district and such other information as may be available. The rules and regulations shall be adopted only after public hearing at which all interested persons are afforded the opportunity to appear and urge or oppose the resolution. The regional Board shall give notice of its intention to adopt or amend rules and regulations and give notice of the hearing in each of the counties within the regional district not less than 10 days prior to the hearing.

- A. The regional Board of any regional district in existence on the date on which the State Air Resources Board divides the State into basins which has adopted rules and regulations, shall file its rules and regulations with the State Board within 30 days after such date.
- B. The regional Board of any regional district in existence on such date which has not, adopted rules and regulations, shall file its rules and regulations with the State Board within six months after such date.
- C. The regional Board of any regional district created after such date shall file its rules and regulations with the State Board within 12 months after creation of the district.

California -- Continued

A city, county or city and county may adopt orders, rules, or regulations which may be more restrictive than those adopted by a regional Board.

Whenever the regional Board finds that the air in the regional district is so polluted as to cause discomfort or property damage at intervals to a substantial number of inhabitants of the region, it may make, in accordance with prescribed procedures and may enforce such general orders, rules, and regulations as will reduce the amount of air contaminants released within the regional district.

The control officer at any time may require from any person subject to regulations of the regional Board, such information or analyses as will disclose the nature, extent, quantity, or degree of air contaminants which are or may be discharged by such source. In addition to such report, the control officer may designate and employ a registered professional engineer to make a study and report as to the nature, extent, quantity, and degree of any air contaminants which are or may be discharged from the source. The engineer is authorized to inspect any article, machine, equipment or other contrivance necessary to make the inspection and report.

If any person willfully fails or refuses to furnish to the control officer information or analyses requested by such control officer, or if the control officer finds that any order, rule, or regulation of the regional Board is being violated after time has been allowed for compliance, the control officer shall notify the hearing Board of such facts and request a public hearing on the matter.

Within 30 days after the control officer has requested a public hearing, the hearing Board shall hold such a hearing and give notice of the time and place of such hearing to persons the hearing Board deems should be notified, not less than 10 days before the date of the hearing.

After a public hearing, the hearing board may find that no violation exists, or may take any of the actions provided herein.

California -- Continued

VI. AIR POLLUTION CONTROL OFFICER

The regional Board shall appoint an air pollution control officer who shall observe and enforce:

- (1) The provisions of this chapter.
- (2) All orders, regulations, and rules prescribed by the regional Board.
- (3) All variances and standards which the regional hearing Board has prescribed.

VII. ADVISORY COUNCIL

The regional Board may appoint an air pollution control advisory council to advise and consult with the regional Board and the control officer in effectuating the purposes of this Act. The council shall consist of the chairman of the regional Board, ex officio, and members who are skilled and experienced in the field of air pollution, and a representative of the academic community, health agencies, agriculture, industry, community planning, transportation, registered professional engineers, general contractors, architects, and organized labor.

The council shall select a chairman and vice chairman and such other officers as it deems necessary.

Council members shall serve without compensation but may be allowed actual expenses incurred in the discharge of their duties. The council shall meet as frequently as the Board or the council deem necessary.

VIII. HEARING BOARD

The regional Board shall appoint a hearing Board, to consist of three members, none of whom is otherwise employed by the District. The terms of members of the hearing Board shall be three years.

IX. ENFORCEMENT

A person shall not discharge from any source air contaminants, smoke, or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or may cause injury or damage to business or property.

This article does not apply to smoke from fire set by or permitted by any public officer for the purpose of weed abatement, the prevention of a fire hazard, or the instruction of public employees in the methods of fighting fire.

This article does not apply to:

- (1) Smoke from fires set by, or permitted by, the county agricultural commissioner for agricultural operations in the growing of crops or raising of fowl or animals, except that such fires shall not be set or permission given in violation of any general order, rule, or regulation adopted by the regional Board.
- (2) Smoke from fires set by, or permitted by, the State Forester for the purpose of watershed, range, or pasture improvement except that such fires shall not be set or permission given in violation of any general order, rule, or regulation adopted by the regional Board.

The Legislature does not intend to occupy the field.

These provisions do not prohibit the enactment or enforcement by any county or city of any local ordinance more restrictive than, or identical to, the provisions of this article and more restrictive than, or identical to, the rules and regulations adopted pursuant to this chapter, which local ordinance prohibits, regulates or controls air pollution.

Counties and cities may, by local ordinance, provide for local enforcement regulations.

The provisions of this chapter do not supersede any local county or city ordinance.

California -- Continued

If it should be held that provisions of this chapter supersede the provisions of any local county or city ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance was in full force and effect.

Nothing in this article limits in any way the power of the regional Board to make needful orders, rules, and regulations pursuant to other provisions of this chapter. Nothing in this article permits any action contrary to any such order, rule, or regulation.

Any violation of any provisions of this article or of any order, rule, or regulation of the regional Board may be enjoined in a civil action brought in the name of the people of the State of California.

Every person who violates any provision of this article or any order, rule, or regulation of the regional Board is guilty of a misdemeanor.

Every day during any portion of which such violation occurs constitutes a separate offense.

Provisions relating to odors do not apply to odors emanating from agricultural operations in the growing of crops or raising of fowls or animals.

Except as provided, orders, rules, and regulations of the regional Board shall apply to every State agency, governmental subdivision, district, public and quasi-public corporation, public agency, and public service corporation, and every city, county, city and county, and municipal corporation.

X. VARIANCES

The provisions of this Act do not prohibit the discharge of air contaminants to a greater extent or for a longer time, or both, than permitted by section 39430-40 (Article 6) or by rules, regulations, or orders of the regional Board, if not of a greater extent or longer time than the hearing Board or a court after a hearing before the hearing Board finds necessary pursuant to the provisions of this article.

The hearing Board on its own motion or at the request of any person may hold a hearing to determine under what conditions and to what extent a variance will be permitted.

The regional Board may provide, by regulation, a schedule of fees for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by such regulations.

The hearing Board shall serve a notice of the time and place of a hearing to grant a variance not less than 10 days prior to such hearing.

If the hearing Board finds that because of conditions beyond control compliance with Article 6 or with any rule, regulation or order of the regional Board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without a sufficient corresponding benefit or advantage to the people in the reduction of air contamination, it shall prescribe other and different requirements not more onerous applicable to plants and equipment operated either by named classes of industries or persons, or to the operation of separate persons; provided, however, that no variance may permit or authorize the maintenance of a nuisance.

In determining under what conditions and to what extent a variance from said requirements is necessary and will be permitted, the hearing Board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the regional district and to any lawful business, occupation or activity involved, resulting from requiring compliance with said requirements or resulting from granting a variance.

The hearing Board may revoke or modify by written order, after a public hearing any order permitting a variance.

The hearing Board shall serve notice of the time and place of a hearing to revoke or modify any order permitting a variance not less than 10 days prior to such hearing upon all persons who will be subjected to greater restrictions if such order is revoked or modified and upon all other persons interested or likely to be affected who have filed a written request for such notification.

The hearing Board shall serve a notice of the time and place of a hearing to grant a variance or to revoke or modify an order permitting a variance either by personal service or by first-class mail. If either the identity or address of any person entitled to notice is unknown, the hearing Board shall serve such person by publication of notice in the district.

The hearing Board in making any order permitting a variance may specify the time during which such order will be effective, not to exceed one year, but such variance may be continued from year to year on the approval of the control officer.

If any local county or city ordinance has provided regulations similar to those in Article 6 or to any order, regulation, or rule prescribed by the regional Board, and has provided for the granting of variances, and pursuant to such local ordinance a variance has been granted prior to notification of the regional district, such variance shall be continued as a variance of the hearing Board for the time specified therein or one year, whichever is shorter, or until and unless prior to the expiration of such time the hearing Board modified or revokes such variance as provided herein.

XI. PROCEDURE

The hearing Board shall select from its number a chairman.

The hearing Board may hold a hearing en banc or may designate two or one of their number to hold a hearing.

If two or three members of the hearing Board conduct a hearing the concurrence of two shall be necessary to a decision.

The hearing Board, not less than two being present, may, in its discretion, within 30 days rehear any matter which was decided by a single member.

Whenever the members of the hearing board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the chairman of the hearing board shall issue a subpoena commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession or under his control material to such hearing.

Whenever any person duly subpoenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the superior court of the county in which the person resides.

Upon receipt of the report, the judge of the superior court shall issue an attachment directed to the sheriff of the county where the witness was required to appear and testify, commanding the sheriff to attach such person and forthwith bring him before the judge who ordered the attachment issued.

On the return of the attachment and the production of the defendant, the judge has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

Every member of the hearing board may administer oaths in every hearing in which he participates, and at any hearing the hearing board may require all or any witnesses to be sworn before testifying.

The hearing board may adopt rules for the conduct of its hearings not inconsistent with this chapter. Such rules shall so far as practicable conform to the rules for administrative adjudication by State agencies in the Government Code.

XII. ENFORCEMENT

Whenever the hearing board finds that any person is in violation of this Act or any order, rule, or regulation of the regional Board, and that no variance is justified and that a reasonable time has been allowed for compliance, the hearing board shall make a decision setting forth findings of fact and such conclusions of law as are required in view of the issues submitted. The decision shall contain an order for abatement which shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be

conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met.

The hearing board shall announce its decision in the form of a draft before filing. Copies of the draft shall be mailed to the parties or their attorneys. The hearing board may direct the prevailing party to prepare a form of decision. Any party may file objections to the draft with the hearing board within 10 days after mailing.

After objections, if any, have been considered by the hearing board or a hearing has been held thereon, if the hearing board finds it necessary, the hearing board shall file its decision.

The decision shall become effective 30 days after it is filed unless:

- (1) A rehearing is granted by the hearing board, or
- (2) The hearing board orders that it be made effective sooner.

Judicial review may be had by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure. Except as otherwise provided, any such petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the hearing board.

Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the hearing board to prepare all or any part of the record, the time within which a petition may be filed shall be extended until five days after its delivery to him. The hearing board may file with the court the original of any document in the record in lieu of a copy thereof.

In any proceeding the court shall receive in evidence any order, rule, or regulation of the Board, any transcript of the proceedings before the hearing board, and such further evidence as the court in its discretion deems proper.

A proceeding for mandatory or prohibitory injunction shall be brought by the district in the name of the people of the State of California in the superior court of the county in which the violation occurs to enjoin any person to whom an order for abatement has been directed and who violates such order.

Proceedings shall conform to the requirements of the Code of Civil Procedure, except that it shall not be necessary to show lack of adequate remedy at law or to show irreparable damages or loss. In any such proceeding, it shall be shown that an order for abatement has been made, that it has become final, and that its operation has not been stayed, it shall be sufficient proof to warrant the granting of a preliminary injunction. If in addition it shall be shown that the respondent continues or threatens to continue to violate such order for abatement, it shall be sufficient proof to warrant the granting of a preliminary injunction. If in addition it shall be shown that the respondent continues to threaten to continue to violate such order for abatement, it shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

XIII. FINANCIAL PROVISIONS

The regional district may borrow money and incur indebtedness in anticipation of the revenue for the current year in which the indebtedness is incurred or of the ensuing year. Such indebtedness shall not exceed the total amount of the estimate of the tax income for either the current or ensuing year.

Before the 15th day of June of each year the regional Board shall estimate and determine the amount of money required by the regional district for purposes of the regional district during the ensuing fiscal year and shall apportion this amount to the counties included within the regional district, one-half according to the relative value of the real estate of each county within the regional district as determined by the regional Board and one-half in the proportion that the population of each county within the regional district bears to the total population of the regional district.

On or before the 15th day of June of each year, the regional board shall inform the Board of Supervisors of each county of the amount apportioned to the county. Each Board of Supervisors shall levy an ad valorem tax on the taxable property, but not including intangible personal property, within the county included within the regional district sufficient to secure the amount so apportioned to it.

Taxes levied by the Board of Supervisors for the benefit of the regional district shall be a lien upon all property within such county lying within the regional district and shall have the same force and effect as other liens for taxes. Their collection may be enforced in the same manner as liens for county taxes are enforced.

At any time prior to the first receipt by the regional district of revenues from taxation, the counties within the regional district may loan any available money to the region for purposes of organization and such expenditures shall constitute a proper expenditure of county funds. The regional Board shall add the sums of money so borrowed from the counties to the first amount apportioned by the board and shall repay the counties for all money borrowed from the first revenues received from taxation.

The regional Board shall, in carrying out the provisions of this article, comply as nearly as possible with the provisions of Chapter 1 of Division 3 of Title 3 of the Government Code.

XIV. WITHDRAWAL OF COUNTY FROM REGIONAL DISTRICT

The Board of Supervisors of a county within a regional district may upon the adoption of a resolution stating such, withdraw from the regional district and establish its own county air pollution control district.

The withdrawal of a county shall not affect the functioning of other counties within the regional district, and such withdrawal shall not constitute a dissolution of the regional district.

The regional district shall continue to function in a manner not inconsistent with the provisions of this part.

California -- Continued

A regional district may be dissolved in a manner which conforms to Section 24372.

A county shall give at least two months' notice to the regional Board of its intention to withdraw from the regional district. A county shall not be withdrawn from a regional district during any fiscal year after the expiration of the first four months of such fiscal year.

XV. BAY AREA POLLUTION CONTROL DISTRICT

The Bay Area Pollution Control District and Humboldt County shall be exempt from the provisions of this part.

3. Air Pollution Control Districts 1/

I. GENERAL STATEMENT

The Air Pollution Control District Act, enacted in 1947, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" (§ 24208). The statute prohibits contaminant discharge:

- (1) for periods in excess of 3 minutes in any one hour which is as dark or darker than Ringelmann No. 2 or has the same or greater opacity as Ringelmann No. 2 (§ 24242).
- (2) which may cause injury or annoyance to the public, or endanger the comfort, health or safety of a person or cause or tend to cause injury to business or property. (§ 24243).

The statute creates in each county an air pollution control district (§ 24200), except that in a unified district each county is a zone of that district (§ 24333).

II. ADMINISTRATIVE ORGANIZATION

A. Establishment of County Air Pollution Control District

An air pollution control district is established in each county (§ 24200) with boundaries coextensive with the county (§ 24201) or, in districts formed by two or more contiguous counties, with boundaries the same as those of the several counties of which it is comprised. (§ 24330 and 24332).

1/ Citations are to the California Health and Safety Code.

B. Authorization of Districts to function:

Air pollution control districts are authorized to function only after a resolution by the appropriate county Board of Supervisors declaring that there is need for an air pollution control district to function in the county (§ 24202) or after ratification by the Boards of Supervisors of two or more counties of the agreement of their representatives to form a unified district (§ 24331).

The resolution is authorized only if, from evidence received at a public hearing (§ 24203) as to which required public notice has been given (§ 24204), it is found that there is need for a district to function because:

- (1) The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with comfortable enjoyment of life or property.
- (2) It is not practical to rely upon the enactment or enforcement of local county and city ordinances to prevent or control the emission of smoke, fumes or other substances which cause or contribute to such pollution (§ 24205).

C. Powers

Upon adoption of the resolution the district has the following powers:

- (1) To have perpetual succession.
- (2) To sue and be sued.
- (3) To adopt a seal and alter it.
- (4) To take by grant, purchase, gift, devise or lease; hold, use, enjoy; and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

- (5) To lease, sell or dispose of any property when such property is no longer required for the purposes of the district or may be leased for any purpose without interfering with the use of the same for the purposes of the district and to pay any compensation received therefor into the general fund of the district. (§ 24212).

D. Air Pollution Control Board

(1) Organization and composition

The Board of Supervisors of a county is, ex officio, the air pollution control Board of the air pollution control district in such county (§ 24220) and the Board of Supervisors of the zones comprising a unified district are, ex officio, the air pollution control Board of the district. (§ 24335).

(2) Duties and powers

- a. The air pollution control Board may make, enforce and perform all other acts for the administration of the district (§ 24260) necessary or proper to accomplish the purposes of the Act. It may take steps to reduce the amount of air contaminants released in the district if it finds that the air is so polluted as to cause any discomfort or property damage at intervals to a substantial number of persons in the district (§ 24262).
- b. Such orders, rules and regulations may be made only after a public hearing of which the required public notice has been given. (§ 24261).
- c. The Board may require by regulation that before any person builds, erects, alters, replaces, operates, sells, rents, or uses any article, machine, equipment or other contrivance specified by such regulation the use of which may cause the issuance of air contaminants, such person must obtain a permit to do so from the air pollution control officer (§ 24263) but is to be allowed a reasonable time

within which to apply for a permit and to furnish the air pollution control officer required information. The Board may by regulation establish standards of performance for any equipment or method specifically designed or intended for use upon any motor vehicle as defined in the Vehicle Code to control the issuance of air contaminants and may prohibit the sale of such equipment until the air pollution control officer has approved it and issued a permit authorizing its sale (§ 24263.7). However, no permit is needed for any vehicle as defined in the Vehicle Code (S.B. 503 -- 1957). Statutory exemptions to such requirements are:

1. mobil equipment,
2. dwellings for not more than four families,
3. an incinerator or barbecue equipment used exclusively in connection with such a dwelling,
4. repairs or maintenance not involving structural changes to any equipment for which a permit has been granted,
5. use of equipment in agricultural operations in the growing of crops or raising of fowls or animals,
6. use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute except that the air pollution control Board of any county, any part of which lies south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian may at its discretion require operators of grove heaters to obtain permits. In no event may such operator be denied a permit if such heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute, or less (§ 24265).

California -- Continued

- d. The air pollution control Board may contract with the county or any city within the district and the county and any such city may contract with the air pollution control district for assistance in regulation of installations which may issue air contaminants. (§ 24266).
- e. The air pollution control Board appoints an air pollution control officer (§ 24222) and may provide for him to employ assistance (§ 24223). His duties are to enforce the provisions of the statute, orders, regulations and rules of the air pollution control Board, all variance and standards prescribed by the hearing Board (§ 24223) and all provisions of the Vehicle Code regarding control of air contaminants. In counties having a civil service system the air pollution control officer and all of his assistants are to be appointed pursuant to civil service provisions (§ 24228). In the enforcement pursuant to (§ 24224) the air pollution control officer is a peace officer (§ 24231). He may enter buildings to enforce pertinent provisions of the Vehicle Code as well as this Act (§ 24246). He is immune from criminal prosecution for acts done in the performance of official duty (§ 24254).
- f. The air pollution control Board appoints a three-member hearing Board. No member may be otherwise employed by the air pollution control district or by the county. Two must have been admitted to practice law in California and one must be a chemical or mechanical engineer (§ 24225). The members serve staggered terms of three years each after the termination of the original term (§ 24226).

E. Financing

- (1) The Board of Supervisors of a county in which an air pollution control district has been activated may appropriate funds to such district to be deposited in the treasury of the district (§ 24209) and the Board of Supervisors of each zone in a unified district is to appropriate necessary funds as determined by the air pollution control Board (§ 24337) to be deposited into the district treasury (§ 24339).

(2) Fees

- a. The air pollution control Board may provide a schedule of fees for the cost of issuing permits and inspection (§ 24267). The fees may be paid to a city or officer or agency thereof when a contract for assistance has been made or into the district treasury (§ 24268).
- b. The air pollution control Board may provide a schedule of fees for the cost of handling variance orders (§ 24293). Such fees are to be paid into the district treasury (§ 24294).

III. PROHIBITED EMISSION: OPERATIONS EXEMPTED

A. Prohibited Emissions

- (1) A person shall not discharge into the atmosphere from any single source of emission any air contaminant for periods aggregating more than three minutes in any one hour which is:
 - a. as dark or darker in shade than Ringlemann No. 2, or
 - b. of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke as dark as Ringlemann No. 2 (§ 24242).
- (2) A person shall not discharge from any source such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or tend to cause injury or damage to business or property (§ 24243).

B. Exemptions

- (1) Exempted from the prohibitions are smoke from necessary fires set by or permitted by any public officer in the performance of his official duty to abate weeds, to prevent a fire hazard, or to instruct public employees in the methods of fire fighting (§ 24245).

- (2) The prohibitions of (§ 24242) do not apply to:
 - a. Agricultural operations in the growing of crops or raising of fowls or animals;
 - b. The use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute;
 - c. The use of other equipment in agricultural operations in the growing of crops, or raising of fowls or animals (§ 24251); or
 - d. Smoke from open burning for which a permit has been issued by the air pollution control officer in accordance with a rule of the district Board (§ 24245.1).

IV. PROCEDURES

A. Composition and Organization of Hearing Board

- (1) The Hearing Board of an air pollution control district consists of three members appointed by an air pollution control Board (§ 24225). The Hearing Board selects a Chairman from its members (§ 24311).
- (2) The Board may hold a hearing or may designate two or more of their number to hold a hearing (§ 24312).
- (3) If two or three members conduct a hearing the concurrence of two is necessary for a decision (§ 24313).
- (4) The Chairman of the Board may issue subpoenas requiring a witness to appear to testify and to produce books, papers and documents (§ 24315).
- (5) The Board may administer oaths (§ 24320) and require witnesses to be sworn (§ 24321).

B. Permits - Suspension and Revocation of Permits

- (1) An air pollution control officer may suspend a permit if the permittee does not furnish him with requested information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 24270). When the information is furnished the permit is to be reinstated (§ 24272). The air pollution control officer may reinstate the permit when "good reasons" exist (§ 24273).
- (2) Within 10 days after receipt of notice of suspension a permittee may file with the Hearing Board a demand for a public hearing (§ 24271).
- (3) An air pollution control officer may request a public hearing regarding reinstatement of a permit which has been revoked or suspended (§ 24274).
- (4) Within 30 days after a request for a public hearing the Hearing Board must give not less than 10 days notice of the time and place of such hearing to the permittee, to the air pollution control officer and to such other persons as the Board deems should be notified (§ 24275).
- (5) After a public hearing, the Hearing Board may
 - a. Continue the suspension of a permit,
 - b. Find that no violation exists and reinstate an existing permit,
 - c. Remove the suspension pending furnishing by the permittee of the information required,
 - d. Or revoke an existing permit if it finds:
 1. The permittee has failed to correct any conditions required by the air pollution control officer,

2. A refusal of a permit would be justified,
3. Fraud or deceit was employed in the obtaining of the permit, or
4. Any violation of the air pollution control statute or of any rule or regulation of the air pollution control Board (§ 24276).

C. Variances

- (1) The Hearing Board may permit variances (§§ 24291, 24292, 24296). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 24295).
- (2) The Hearing Board in making any order permitting a variance may specify a time not to exceed one year during which the order will be effective. It may be continued from year to year on the approval of the air pollution control officer (§ 24301).
- (3) The Hearing Board may revoke or modify by written order, after a public held upon not less than 10 days' notice, any order permitting a variance (§ 24298).
- (4) A variance granted under a local ordinance prior to activation of an air pollution control district is to be continued for the time specified therein or for one year, whichever is shorter or until the Hearing Board revokes or modifies such variance (§ 24302).

D. APPEALS

A trial de novo and an independent determination of the reasonableness and legality of an action of the hearing board may be had in the superior court by a person, including the air pollution control district, aggrieved by such action. (§§ 24322 and 24323).

V. VIOLATIONS AND PENALTIES

A. INJUNCTION

Violation of Article 3 of the statute. (§ 24242, 24243) regarding prohibited contamination or of any order, rule or regulation of the air pollution control board may be enjoined. (§ 24252).

B. THE FOLLOWING ARE PUNISHABLE AS MISDEMEANORS:

1. A violation of Article 3 or any order, rule or regulation of an air pollution control district. Each day during any portion of which such violation occurs constitutes a separate offense. (§§ 24253 and 24281).
2. Knowingly making any false statements in any application for a permit to use a contrivance causing issuance of air contaminants or in any information, analyses, plans or specifications submitted in conjunction therewith or at the request of the air pollution control officer. (§ 24277).
3. The building, erecting, altering, replacing, using or operating of any source capable of emitting air contaminants for which a permit is required when the permit to do so has been suspended or revoked. (§ 24278), or when no permit has first been obtained. (§ 24279), or contrary to the provisions of any permits issued under regulations adopted pursuant to Article 3. (§ 24280).
4. Willful failure or neglect of a permittee to furnish information, analyses, plans or specifications required by the air pollution control officer. (§ 24282).
5. Obstructing an air pollution control officer in entering a

C. Contempt

Failure to obey a subpoena of the Hearing Board is punishable as contempt. The judge of the superior court of the county, upon receipt of a report of the contempt from the Board, is required to issue an attachment of the body. The same penalties may be imposed and the same punishment inflicted on the violator as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court. (§§ 24317, 24318, 24341).

VI. SCOPE AND CONSTRUCTION

The legislature does not intend to occupy the field of air pollution legislation by this Act and does not prohibit any local ordinance stricter than the provisions of the statute or rules and regulations adopted thereunder, nor do these supersede any such local county or city ordinance. The prosecution or punishment of a violation of a local ordinance committed when the ordinance was in full force and effect is not barred if it should be held that these provisions of the statute supersede the local ordinance. (§§ 24247-24249).

4. Motor Vehicle Pollution Control

I. GENERAL STATEMENT

The Legislature finds and declares:

That the emission of pollutants from motor vehicles is a major contributor to air pollution in many portions of the State;

That the control and elimination of such pollutants is of prime importance for the protection and preservation of the public health and well-being, and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property; and

That the State has a responsibility to establish uniform procedures for compliance with standards which control or eliminate such pollutants. (§ 39080).

II. DEFINITIONS

- (1) "Motor vehicle pollution control device" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine modification on a motor vehicle which causes a reduction of pollutants emitted from the vehicle.
- (2) "Certified device" means a motor vehicle pollution control device for the control of emissions of pollutants from a vehicle, including, but not limited to, the exhaust system, the crankcase, the carburetor, and the fuel tank, for which standards have been set by the Board, and for which a certificate of approval has been issued by the Board.

The provisions of this Act shall not apply to any motor vehicle manufactured in the year 1938 or prior thereto, if such motor vehicle is operated or moved over the highway solely for the purpose of taking it to a place for historical exhibition or other similar purpose.

III. POWERS AND DUTIES

- (1) To adopt rules and regulations in accordance with the provisions of the Administrative Procedure Act, necessary for proper execution of the powers and duties granted to, and imposed upon the Board.
- (2) To employ such technical and other personnel as may be necessary for the performance of its powers and duties.
- (3) To determine and publish the criteria for approval of motor vehicle pollution control devices. In determining the criteria the Board shall take into consideration the cost of the device and its installation, its durability, the ease and facility of determining whether the device, when installed on a motor vehicle, is properly functioning, and any other factors which, in the opinion of the Board, render such a device suitable or unsuitable for the control of motor vehicle air pollution or for the health, safety, and welfare of the public.
- (4) To issue certificates of approval for any motor vehicle pollution control device which after being tested by the Board or tested and recommended by a laboratory designated by the Board as an authorized vehicle pollution control testing laboratory, the Board finds that the device operates within the standards set by the Board and meets the criteria adopted; provided that no certificate of approval shall be issued for any device required by subdivision (d) of § 39090 of this code if:
 - a. The cost of such device, including installation, is more than \$65.
 - b. The annual maintenance cost of the device, including any adjustment necessary for its proper operation in order to meet prescribed standards set is likely to exceed \$15 a year; or

- c. The device does not equal or exceed the performance criteria established by the Board for devices for new motor vehicles or, in the alternative, have an expected useful life of 50,000 miles of operation.
- (5) To exempt from the certification, sale, and installation of motor vehicle pollution control devices designated classifications of motor vehicles for which certified devices are not available, and motor vehicles whose emissions are found by appropriate tests to meet State standards without additional equipment, and motor-driven cycles, implements of husbandry, and vehicles which qualify for special license plates under the Vehicle Code.
- (6) To revoke, suspend, or restrict a certificate of approval previously issued or an exemption previously granted, upon a determination by the Board that the device or motor vehicle no longer operates within the standards set by the Board or no longer meets certain criteria or no longer should be exempted. Provided that once any motor vehicle is equipped with a certified device it shall not thereafter be deemed to be in violation of this chapter or § 27516 of the Vehicle Code because a certificate of approval for such device is subsequently revoked, suspended, or restricted, and replacement parts for such device may continue to be supplied and used for such vehicle, unless such revocation, suspension or restriction of a certificate of approval is based upon a finding that the certified device has been found to be unsafe in actual use or is otherwise mechanically defective, in which event such motor vehicle must be brought into compliance with this chapter within 30 days after such finding.

- (7) Proceedings with respect to the denial of applications for the issuance of certificates of approval or the granting of exemptions, or for the revocation, suspension, or restriction of certificates of approval previously issued, or exemptions previously granted, by the Board shall be conducted in accordance with the provisions of Chapter 5 of the Government Code. (§ 39083).

The Board may issue permits for the testing of experimental motor pollution control devices installed in motor vehicles.

Any manufacturer of a device required by subdivision (d) of § 39030 of this code shall, as a condition to certification of such device by the Board, agree that so long as only one such device is certified by the Board such manufacturer shall either:

- (1) Agree to enter into such cross-licensing or other agreements as the Board determines are necessary to insure adequate competition among manufacturers of such devices to protect the public interest; or
- (2) Agree as a condition to such a certification that if only one such device from one manufacturer is made available for sale to the public, the Board shall, taking into consideration the cost of manufacturing the device and the manufacturer's suggested retail price, and in order to protect the public interest, determine the fair and reasonable retail price of such device and may require, as a condition to continued certification of such device, that the retail price of such device, including installation, not exceed such price as determined by the Board. In either event the retail price so determined by the Board for a device required by subdivision (d) of § 39090 may be less than, but shall not be more than, \$65 per vehicle.

The Board shall adopt regulations specifying the manner in which a motor vehicle pollution control device shall be submitted for testing and certification.

Whenever the Board issues certificates of approval for two or more devices for the control of emissions of pollutants from a particular source of emissions from motor vehicles for which standards have been set by the Board, it shall so notify the Department of Motor Vehicles.

IV. CERTIFICATION, SALE AND INSTALLATION OF MOTOR
VEHICLE POLLUTION CONTROL DEVICES (§ 39090 et seq.).

- A. Every 1966 or later motor vehicle subject to registration in this State shall be equipped with a certified device or devices to control emission of pollutants from the crankcase and exhaust.
- B. Every 1963 or later motor vehicle subject to registration in this State shall be equipped with a certified device to control the emission of pollutants from the crankcase.
- C. Every motor vehicle of 1955 through 1962 year model subject to registration in this State upon transfer of ownership and registration to an owner whose residence is in a county or portion of a county within an air pollution control district which may function and exercise its powers shall be equipped with a certified device to control the emission of pollutants from the crankcase.
- D. Every motor vehicle of 1955 through 1965 year model subject to registration in this State upon transfer of ownership and registration to an owner whose residence is in a county or portion of a county within an air pollution control district which may function and exercise its powers, shall be equipped with a certified device to control the emission of pollutants from the exhaust.
- E. The provisions of subdivisions A., B., C., and D., of this section shall not be applicable to any of the following:
 - (1) ~~Any~~ motor vehicle or class of motor vehicles exempted by the Board.

- (2) Any motor-driven cycle, implement of husbandry or vehicle which qualifies for special plates under the Vehicle Code.
- F. The provisions of subdivisions C., and D., shall not be applicable in districts formed between January 1, 1964, and July 23, 1965.
- G. On and after December 1, 1967, every 1968 or later year model passenger vehicle, except motorcycles, subject to registration and first sold and registered in this State shall be equipped with a certified device or devices to control emission of pollutants from the crankcase and exhaust. The Board may only grant an exemption for not to exceed 1 percent of a manufacturer's passenger vehicle sales in California in the preceding model year.
- H. Every 1967 or later year model commercial motor vehicle under 6,001 pounds manufacturer's maximum gross vehicle weight rating, subject to registration and first sold and registered in this State shall be equipped with a certified device or devices to control emission of pollutants from the crankcase and exhaust.
- I. On and after December 1, 1968, every 1969 or later year model truck, truck tractor, or bus, except those which are diesel-powered, subject to registration and first sold and registered in this State shall be equipped with a certified device or devices to control emission of pollutants from the crankcase and exhaust. The Board may only grant an exemption for not to exceed 1 percent of a manufacturer's truck, truck tractor and bus sales in California in the preceding model year.
- J. Motor vehicles found by the Board to meet established State standards and Board criteria without additional equipment are exempt from the provisions of this section.

- K. The provisions of subdivisions C., and D., of this section shall not be applicable to motor vehicles registered to an owner whose residence is in any county in which an air pollution control district may function and exercise its powers if (1) prior to the effective date of this section, the Board of Supervisors of the county has found that the equipment of motor vehicles with devices to control the emission of pollutants is unnecessary for the prevention of air quality in that county, and (2) no air pollution control district created pursuant to Chapter 2 of Division 20 has ever been authorized to function and exercise its powers in any county adjacent to such county; nor shall such provisions be applicable to motor vehicles registered to an owner whose residence is in any county adjacent to such a county, which adjacent county is included within the boundaries of an air pollution control district created by special law to include the area of two or more counties, and in which county such air pollution control district created by special law may transact business and exercise its powers.
- L. The provisions of subdivisions C., and D., of this section shall not be applicable to motor vehicles registered to an owner whose residence is in an area, designated pursuant to this subdivision, of any county having an area in excess of 7,000 square miles in which an air pollution control district consisting of a single county may function and exercise its powers and within 60 days after the effective date of this section the Board of Supervisors of such county has classified the county into two areas because of substantial geographic and climatic differences between the two areas, and within 60 days after the effective date of this section the Board of Supervisors of the county has found that within one of such areas, designated by the Board, the equipment of motor vehicles with devices to control the emission of pollutants is unnecessary for the preservation of air quality within that area.

No new motor vehicle required pursuant to this chapter to be equipped with a certified device to control the emissions of pollutants from the crankcase or exhaust shall be sold in this State unless:

- A. The manufacturer thereof has filed a certificate with the Board within the preceding 12 months stating that new motor vehicles of that make, model, and year manufactured pursuant to dealers' orders for initial sale and registration in this State, will be equipped at the factory with certified devices.

No person shall sell, display, advertise, or represent any device which is not a certified device. No person shall install or sell for installation upon any motor vehicle any motor vehicle pollution control device which has not been certified by the Board.

Any violation of this Act is a misdemeanor.

V. AUTHORIZED MOTOR VEHICLE POLLUTION CONTROL
TESTING LABORATORIES

The Board may designate such laboratories as it finds are qualified and equipped to analyze and determine, on the basis of the standards established by the Board, devices which are so designed and equipped to meet the standards set by the Board and the criteria established by the Board.

All devices tested for purposes of certification shall be tested by a procedure which includes tests of the device to measure its ability to control the emission of pollutants while a vehicle is operating at full performance.

5. Bay Area - San Francisco 1/

I. GENERAL STATEMENT

The Bay Area Air Pollution Control District Act was enacted in 1955 to provide a special district to control and suppress air pollution in the San Francisco Bay area because of the special problem created there by the permanent temperature inversion layer.

The statute creates a district composed of nine counties which is a body corporate and politic and a public agency of the State. (§ 24350, and 24350.1).

The definition of "air contaminant" is the same as that given in the Air Pollution Control District Act with the addition of "mist" as a contaminant (§ 24348.3). (For prohibited emissions see Item III infra, § 24360).

II. ADMINISTRATIVE ORGANIZATION

A. Activation of the District

- (1) The district may transact business and exercise its powers on the effective date of this law in the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara (§ 24350.2).
- (2) In the Counties of Napa, Solano, and Sonoma the district may not transact business nor exercise its powers until the Board of Supervisors of a county, after giving prescribed notice, on its own motion or on petition of electors, holds a public hearing to determine if there is need for the district to function in the county. (§§ 24350.3, 24350.4 and 24350.5).

1/ Citations are to the California Health and Safety Code.

- (3) From and after the date of the filing of a certified copy with the Board of the resolution by the Board of Supervisors, declaring the need for the Bay Area Air Pollution Control District to function, the district begins to function and may exercise its powers within the county. (§ 24350.8).

B. Board of Directors of Bay Area Air Pollution Control District

(1) Composition and Organization

- a. The Board is the governing body of the district and exercises all the powers of the district except as otherwise provided. (§ 24352.3).
- b. The Board of Supervisors of each county in which the district is activated appoints one of its members to be a member of the Board. The city selection committee of each such county (composed of mayors or presiding officers of cities) appoints a member of the Board, such member to be selected from among the mayors and city councilmen of the cities within such county. (§ 24352).
- c. Each member appointed by the Board of Supervisors holds office for four years and each member appointed by the city selection committee holds office for two years. (§ 24352.1).
- d. Members of the Board may be removed at any time by the appointing authorities. (§§ 24352.1 and 24352.2).
- e. If a member ceases to be a mayor, supervisor or councilman, his membership on the Board is terminated no later than three months thereafter. (§ 24352.8).
- f. A majority of the members of the Board constitutes a quorum for the transaction of business. (§ 24352.4).

- g. The Board is to establish and maintain offices wherever it deems will best facilitate the accomplishment of district objectives. (§ 24354.3).
 - h. The Board decides when and where to meet. (§ 24354.4).
 - i. The Board appoints its chairman and other officers from its members. (§ 24354.5).
- (2) Powers and Duties

a. General Authority

The district has the power:

- 1. To have perpetual succession.
 - 2. To sue and be sued.
 - 3. To adopt a seal and alter it.
 - 4. To take by grant, purchase, gift, device, or lease; hold, use, enjoy; and lease or dispose of real or personal property of every kind necessary to the full exercise of its powers.
 - 5. To lease, sell or dispose of any property or interest therein when it is no longer required for the purposes of the district, or may be leased without interfering with its use for the purposes of the district, and to apy any compensation received therefor into the general fund of the district. (§ 24354).
- b. The Board may appoint an executive secretary. (§ 24352.6).

- c. The Board may cooperate and contract with any Federal, State or local governmental agencies, private industries, or civic groups as necessary or proper to the accomplishment of the purposes of the district (§ 24352.7).
- d. The Board appoints an air pollution control officer (§ 24355).
 - 1. The air pollution control officer enforces the provisions of the statute, orders, regulations, and rules prescribed by the Board, and variances and standards prescribed by the hearing board. (§ 24355.2).
 - 2. The air pollution control officer, subject to statutory limitations, appoints his personnel. (§ 24355.1).
 - 3. He may require certain information and analyses from persons subject to regulations of the Board. (§ 24362.4).
- e. The Board may contract for the conducting of competitive examinations for applicants for employment and for the performance of any other service connected with the administration of the district (§ 24354.8).
- f. The Board may by ordinance adopt a civil system for employees of the district except the executive secretary and air pollution control officer are exempt from such system and serve at the pleasure of the Board (§ 24354.9).
- g. The Board of Directors appoints a Bay Area Air Pollution Control District Advisory Council which consists of twenty members, ten of whom must represent specified groups of the community. (§ 24356).

- h. The Board appoints a three-member hearing board, one member to be a lawyer and one a chemical or mechanical engineer, (§ 24357).
- i. After adoption of a resolution made upon proper notice and hearing the Board may adopt and enforce rules and regulations to control the release of air contaminants (§§ 24362 and 24362.1). When the Board finds that the air in the district is so polluted as to cause discomfort or property damage to a substantial number of the inhabitants of the district it may make and enforce such general orders, rules, and regulations as will reduce the amount of air contaminants released; but no such order shall specify the design of equipment, type of construction or particular method to be used in reducing the release of air contaminants. (§ 24362.3).
- j. Except as provided in §§ 24360.1 and 24360.2 (see III B, 1 and 2 below) orders, rules and regulations of the Board apply to all State agencies, political subdivisions, public and quasi-public corporations and public service corporations (§ 24360.9).

C. The Air Pollution Control District May Be Dissolved
According to Statutory Procedures. (§ 24372).

III. PROHIBITED EMISSIONS

- A. Discharge from any source of such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property is prohibited. (§ 24360).

B. This Section Does Not Apply to the Following:

- (1) Smoke from fires set by public officers, as a part of their public duties, for the purposes of weed abatement, prevention of fire hazard or necessary instruction of public employees in methods of fire fighting. (§ 24360.1).
- (2) Smoke from fires set, or permitted, by the agricultural commissioner of any county as a part of agricultural operation for growing crops or raising fowls or animals, if set or permitted in the course of his official duty; nor to smoke from fires set or permitted by the State Forester or his agent for watershed, range or pasture improvement, if the fire is set or permission given in the performance of their official duties. In neither case may the fire set nor permission given violate rules or regulations laid down pursuant to § 24362.3 (See II. B. 21, supra) (24360.2 as amended).
- (3) Odors resulting from agricultural operations in growing crops or raising fowls or animals. (§ 24360.8).

C. This Act does not occupy the field, and the enactment and enforcement of county or city ordinances stricter than, or identical to, the rules and regulations adopted pursuant to this Act is expressly permitted. (§ 24360.3). (See item VII infra for variances).

D. Open Outdoor Fires

It shall be unlawful for any person, firm, corporation, association, or public agency to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire within the district, except as provided in this article. (§ 24361).

"Open outdoor fire", as used in this article, means any combustion of combustible material of any type outdoors, in the open, not in any enclosure, where the products of combustion are not directed through a flue. "Flue" as used in this article, means any duct or passage for air, gases or the like, such as a stack or chimney. (§ 24361.1).

Fires excepted from this provision are:

- (1) Fires used only for cooking of food for human beings or for recreational purposes.
- (2) Any fire set or permitted by any public officer, in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, including the disposal of dangerous materials where there is no safe alternate method of disposal, or in the instruction of public employees in the methods of fighting fires.
- (3) Fires set by or permitted by the county agricultural commissioner for the purpose of disease and pest control.
- (4) The Board may make additional exceptions and may amend or revoke such exceptions to this article by general order, rule, or regulation adopted pursuant to this chapter. (§ 24361.2).

Nothing in this article is intended to permit any practice which is a violation of any statute, ordinance, rule, or regulation. (§ 24361.3). Nothing in this article limits the power of the Board to make needful orders, rules, and regulations pursuant to other provisions of this chapter. Nothing in this article permits any action contrary to such order, rule, or regulation. (§ 24361.4) Any violation of the provisions of this article is a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment not exceeding six months, or both. (§ 24361.5).

IV. PROCEDURES

A. Hearing Board

(1) Composition and Organization

- a. The Hearing Board, appointed by the air pollution control district Board, consists of three members. (§ 24357).

- b. The Hearing Board shall select its chairman from its members. (§ 24367.1).
- c. A hearing may be held en banc, or by one or two of the members. (§ 24367.2).
- d. The concurrence of two is necessary to a decision if two or three members conduct a hearing. (§ 24367.3).

(2) Powers

- a. The Hearing Board may issue subpoenas. (§ 24367.5).
- b. Members of the Hearing Board may administer oaths, (§ 24367.10).
- c. The Hearing Board may permit variances. (§ 24365).

V. VIOLATIONS AND PENALTIES

A. Failure to Obey a Subpoena

- (1) Failure to appear before a Hearing Board to give evidence or to produce books and papers in response to a subpoena is contempt and is to be reported by the Hearing Board to the judge of the superior court of the county in which the person resides. (§ 24367.7).
- (2) Upon receipt of the report, the judge of the superior court issues an attachment and has jurisdiction of the matter upon production of the body of the defendant. (§§ 24367.8 and 24367.9).
- (3) The same punishment and penalties attach to such defendant as in the case of a witness subpoenaed in the trial of a civil cause before a superior court. (§ 24367.9).

VI. FINANCES

California -- Continued

A. Taxation

Each Board of Supervisors is required to levy for the benefit of the district an ad valorem tax on the taxable property, but not on intangible personal property, within the county, which tax is a lien upon the property. Collection may be enforced as are liens for county taxes. The amount of money required by a district in a year may not exceed one cent and three mills on each one hundred dollars of all the property therein. (§§ 24370.1, 24370.2 and .3).

B. Loans

The district may borrow money for the current or ensuing year in amounts not to exceed the total amount of the estimate of the tax for the current or ensuing year. (§ 24370).

C. Fees

The Board of Directors of the district may provide a schedule of fees for the filing of applications for variance, etc. (§ 24365.2, 24365.3).

VII. VARIANCES

A. The Hearing Board may on its own motion or at the request of any person hold a hearing after required notice to determine under what conditions and to what extent a variance from the requirements established by Article 10 or by rules, regulations, or orders of the Board is necessary and will be permitted. (§§ 24365.1 and 24365.4).

B. Variances may be permitted if compliance with Article 10 or with any rule, regulation, or order of the air pollution control Board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity without sufficient corresponding benefit to the people in the reduction of air contamination, but no variance may permit the maintenance of a nuisance. (§ 24365.5).

California -- Continued

- C. Variances may be revoked or modified by written order after a public hearing held upon not less than ten days' notice.(§ 24365.7).
- D. The Hearing Board is to specify the time during which a variance order is to be effective, in no event to exceed one year, but such variance may be continued from year to year on the approval of the control officer.(§ 24365.10).
- E. Prior local variances may be continued for the time therein specified but no longer than one year unless prior to the time of expiration the Hearing Board revokes or modifies such variance.(§ 24365.11).

6. Rapid Amortization of Air Pollution Control Devices 1/

Effective with income years beginning after December 31, 1954, a taxpayer may, at his election, claim a deduction with respect to amortization of the adjusted basis (for determining gain) of any device, machinery or equipment for the collection at the source of atmospheric pollutants and contaminants based on a period of 60 months. The period will begin, at the election of the taxpayer, with the month following the month in which the equipment was completed or acquired, or with the succeeding income year.

Every person, at his election, shall be entitled to a deduction with respect to amortization of the adjusted basis (for determining gain) of any device, machinery, or equipment for the collection at the source of atmospheric pollutants and contaminants for the taxable year in which such device, machinery or equipment was completed or acquired or in which certification was made, whichever is later, in the full amount of the cost of the device, machinery or equipment. The amortization deductions with respect to any taxable year shall be in lieu of the deduction with respect to such device, machinery, or equipment relating to exhaustion, wear and tear, and obsolescence and in lieu of the election provided above.

If property described above has been completed or acquired in taxable years prior to August 25, 1967, the taxpayer may deduct an amount equal to 100 percent of the cost of the property completed or acquired in the taxable year commencing on January 1, 1967, or commencing with fiscal years beginning in calendar year 1967, less any amounts deducted in previous taxable years as a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) with respect to such property.

1/ (§ 17226 and 17226.5 (for individual persons) and § 24372 and 24372.5 (for banks and corporations), Revenue and Taxation Code, West's Annotated California Codes, and Ch. 1413, Laws 1967).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Colorado 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

House Bill 1024 requires the use of all available practical methods to reduce, prevent and control air pollution. Toward this policy it establishes ambient air standards and prohibits specific actions. It creates a nine member air pollution variance board as a division of the public health department.

II. DEFINITION

1. "Person" means any individual, public or private corporation, partnership, association, firm, trust, estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. (Sec. 3 (4)).
2. "Air contaminant" means a dust, fume, gas, mist, smoke, vapor (other than water vapor alone), pollen, or any combination thereof. (Sec. 3 (5)).
3. "Air pollution" is the presence in the atmosphere of one or more air contaminants in quantities, or characteristics, and of a duration throughout the state or throughout such areas of the state as shall be affected thereby, which are injurious to human, plant, or animal life or to property, or which unreasonably interfere with the comfortable enjoyment thereof. (Sec. 3 (6)).
4. "Air contamination" or "emission" means the discharge into the atmosphere of one or more air contaminants which contribute to a condition of air pollution. (Sec. 3 (7)).
5. "Air contamination source" means any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air contaminant. (Sec. 3 (8)).
6. "Ambient air" is the surrounding or outside air. (Sec. 3 (9)).
7. "Air cleaning device" is any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere. (Sec. 3 (10)).

1/ Chapter 45, pp. 210-226, Laws 1966 as amended by Senate Bill No. 380, Approved June 8, 1967.

Colorado-- Continued

8. "Gas" is a formless fluid which occupies space and which can be changed to a liquid or solid state only by increasing pressure with decreased or controlled temperature, or by decreased temperature with increased or controlled pressure. (Sec. 3 (12)).
9. "Ringelmann" means the method of estimating smoke density described in U. S. Bureau of Mines Information Circular 7718, dated August 1955, by means of the Ringelmann chart. (Sec. 3 (13)).

III. AIR AND EMISSION STANDARDS

A. Ambient Air Quality Standards

Any contamination by particulates and gases above the following limits is declared unacceptable:

1. Kind of particulate	Average measurable limits for any 3-month period
Suspended particulates	120 micrograms per cubic meter
Coefficient of haze	0.5 Coh units (Sec. 4 (2(a)))
2. Gases	Measurable limits based on (1%) one percent of the time during any 3-month period
Total oxidant	.1 part per million for one hour using a potassium iodide test method.
Oxides of nitrogen	.1 part per million for 1 hour
Sulfur dioxide	.5 parts per million for 1 hour or - .1 part per million for 24 hours (Sec. 4 (3(a)))

B. Sampling Stations

Sampling stations are to be located and operated as close to the following criteria as possible:

1. Located in the central business district of a city or community and at such other places as the division determines desirable, approximately twenty-five to fifty feet above ground level and where the air being sampled is representative of the ambient air with samples to be collected on a regular three-day basis, (Sec. 4 (2) (b) (i) and (ii).

2. Sites and conditions of gas sampling shall be chosen as to realistically represent the exposures of persons and property which might be affected. (Sec. 4 (3) (b)).

3. All sampling of exhaust gases shall be conducted following techniques designated by the appropriate air pollution control authority. All sulphur present in gaseous compounds containing oxygen shall be deemed to be present as sulphur dioxide, and analyses of samples taken to determine the amount of sulphur dioxide in exhaust gases shall be made as specified by the air pollution control authority. Tests shall be for at least fifteen consecutive minutes or ninety per cent of the time of actual source operation, whichever is less. (Sec. 5 (6) (a)).

C. Emission Standards

The following are prohibited:

1. To discharge or cause to be discharged into the atmosphere, from any single emission source, any air contaminant for a period aggregating more than 3 minutes during any hour which is a shade as dark or darker as, or an opacity equal to or greater than smoke in No. 2 on the Ringelmann chart or of any other nationally accepted measuring system comparable to the Ringelmann method. (Sec. 5 (2)).

2. To allow solid matter in combustion gas from any fuel-burning equipment in excess of 0.85 pounds per 1000 pounds of such gas, adjusted to 12 per cent carbon dioxide, or solid particulates in any other gas in excess of 0.85 pounds per 1000 pounds of undiluted gas, to escape into the atmosphere or pass any convenient measuring point in a discharge system. (Sec. 5 (3)).

3. To cause or allow any emission of sulphur dioxide which results in average ground-level concentrations in excess of one part per million, based on volume, of sulphur dioxide in a twenty-minute period of any hour. Average exposure shall not exceed three-tenths parts per million, based on volume, in any eight-hour period. Such limitations shall not apply to ground-level concentrations occurring on the property from which emission occurs; provided, the property is controlled by the person responsible for such emission. Nor shall any person cause or permit the emission of gas containing sulphur dioxide in excess of two thousand parts per million, based on volume. (Sec. 5 (6) (a) (b)).

4. Sulphur dioxide emissions in excess of specified limits does not constitute a violation if the following conditions are met:

- a. Written notification of the air pollution control authority prior to emission.
- b. Provision of at least 3 sulphur dioxide monitoring stations and a meteorological recording station to record wind speed and direction.
- c. Filing of instrument data at end of each month with air pollution control authority. When emission is in excess of limits, said person must furnish proof of proper reduction or prevention action to the Air Pollution Authority. (Sec. 5 (6) (c)).

5. On and after January 1, 1970, the burning of any combustible refuse in any incinerator except in an approved multiple-chamber incinerator or in equipment found by the Division in advance of such use to be equally effective for the purpose of air pollution control as an approved multi-chamber incinerator is prohibited. No person shall operate, or cause to be operated, any incinerator in such manner as to create emissions which violate any provision of this section. (Sec. 5 (4) (c)).

D. Storage Facilities

1. Any storage, holding, stationary tank, reservoir, or other container having a capacity of forty thousand or more gallons used for gasoline or any petroleum distillate having a vapor pressure of one and one-half pounds per square inch absolute, or greater, under actual storage conditions, shall be designed and equipped with vapor loss control devices, properly installed, in good working order, and in operation. The control equipment shall not be used if the gasoline or petroleum distillate has a vapor pressure of eleven pounds per square inch absolute, or greater, under actual storage conditions. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

2. Permissible vapor loss control devices are a floating roof consisting of a pontoon type or double-deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, to close the space between the roof edge and tank wall, or a vapor balloon, or vapor dome, designed in accordance with accepted standards of the petroleum industry. Propane or butane, and similar products, shall be stored in pressure tanks maintaining working pressures sufficient at all times to prevent hydrocarbon vapors or gas loss to the atmosphere, or at refrigerated low temperature, or in low pressure storage equipped with vapor collection and compression equipment designed to prevent loss of hydrocarbon vapor or gas to the atmosphere. (Sec. 5 (5) (a) (b)).

3. Any other petroleum storage tank which is constructed or extensively remodeled on or after the effective date of this act shall be equipped with a submerged filling device. (Sec. 5 (5) (c)).

4. All facilities for dock loading or petroleum products, having a vapor pressure of one and one-half pounds per square inch absolute or greater, at loading temperature, shall provide for submerged filling. (Sec. 5 (5) (d)).

IV. LOCAL GOVERNMENT - AUTHORITY

In order to assure coordination of efforts to control and abate air pollution, at least semiannually the Division and each air pollution control authority created by a local air pollution law shall confer and review each other's records concerning the area subject to such local law and coordinate their respective plans and programs for such area. (Sec. 6 (6)).

V. COLORADO AIR POLLUTION VARIANCE BOARD

A. Composition and Organization

The board composed of eight members appointed by the Governor and one member designated by the state health board. The appointed members shall be : a registered professional engineer with at least five years experience who is not from industry, either a state licensed physician or toxicologist not connected with industry, three representatives from state industries, and three representatives of the public at large, not from industry.

The appointed members shall serve four year terms, except that the first terms will be staggered. The health board member will serve at the discretion of the health board. Vacancies will be filled by gubernatorial appointment for the remainder of the original term. The Governor may remove any appointed member for cause.

The board shall meet at least quarterly, and special meetings may be called by the chairman on his own initiative or upon written request of two or more members or by the administrative division of the public health department. Three days notice shall be given each board member prior to meetings. Four members constitute a quorum, and a majority concurrence is needed for any determination.

The chairman shall be elected annually from among the membership, except the health board member shall chair the board the first year.

Each member shall receive a \$20 per diem for each day spent in discharge of official duties, not to exceed \$1,200 per year. He shall be reimbursed for actual and necessary expenses incurred in duty performance. (Sec. 7.1, .2, .3).

B. Powers and Duties

The Colorado Air Pollution Variance Board shall have the following duties and powers:

1. To grant variances. (Sec. 7 (4) (b)).
2. To report to the general assembly on the effectiveness of this act's provisions to carry out its intent and include any recommendations in regard to needed or desirable legislative changes. (Sec. 7 (4) (c)).
3. To hold public hearings, conduct investigations, compel the attendance of witnesses, receive pertinent and relevant proof as it deems necessary, proper or desirable to effectively discharge its duties and responsibilities. (Sec. 7 (5) (b)).
4. To designate a hearing officer to conduct hearings on violations of this act and on requests for variances. The officer shall have power to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths, and to take

such testimony as may be necessary. Such hearing officer shall certify and file with the air pollution variance board for adoption, rejection, or modification by said variance board such hearing officer's recommended findings, conclusions and proposed orders. The hearing officer shall cause a copy of such findings, conclusions and proposed orders to be sent to each party to the hearing; and the hearing officer shall certify and file with the air pollution variance board a copy of the full hearing record. A party can consent to have his case heard by a quorum of less than five members of the air pollution variance board, the members present to act as a hearing officer might. (Procedure: 3.16 C.R.S. 1963) (Sec. 7 (5) (c)).

C. Colorado Public Health Department Administrative Division

Duties and Powers

1. To determine, by means of field studies, air monitoring, and sampling, if the ambient air standards are being violated in any state area and to designate such area by legal description. Also to be included are adjacent areas from which air contamination does or is likely to contribute to air pollution. The determination in regard to adjacent areas shall be based upon meteorological and topographical considerations. (Sec. 8 (1) (b) (c)).
2. Once a year to report to the members of the general assembly on the effectiveness of the provisions of this act in carrying out the legislative intent, and to include any recommendations with respect to legislative changes needed or desirable, including changes in standards. (Sec. 8 (1) (d)).
3. To conduct studies and research of air pollution and its control, abatement or prevention. (Sec. 8 (2) (b)).
4. To designate one or more persons or agencies in any area of the state as an air pollution control authority and division agent to exercise and perform such powers and duties as may be specified in such designation and to furnish required personnel to the air pollution variance board to carry out its duties and responsibilities. (Sec. 8 (2) (c) (g)).
5. To enter and inspect any property, premise, or place for the purpose of investigating either an actual or a suspected source of air pollution or air contamination or ascertaining compliance or noncompliance with any emission standard or any order under this act. (Sec. 8 (2) (d)).

6. Provide advisory technical consultation services to local communities. (Sec. 8 (2) (e)).

7. To inform the appropriate governmental agency of the results of atmospheric tests conducted in its jurisdiction and notify the city, town, county, or city and county affected whenever tests establish that the ambient air or a source, or or sources, of emission of smoke or air contaminant fail to meet the established standards. From time to time after the local agency has been so notified, the division shall report and make available to the public such results, notices to local agencies, and any progress made by the local agency following such notices. (Sec. 8 (2) (f)).

8. To serve as the state agency for the receipt of moneys from the Federal government or other public or private agencies with respect to air pollution control activities. (Sec. 8 (2) (h)).

9. To certify, qualify, or otherwise designate to any other agency or department of the government of this state or of any other state or of the Federal government that any facility, land, building, machinery or equipment, or any part thereof, has been constructed, erected, installed, or acquired in conformity with the requirements of this state or of this act for control of air pollution or in conformity with the requirements for control of air pollution of any other state or the Federal government. (Sec. 8 (2) (i)).

10. In the performance of its duties and in the exercise of its powers as set forth in this act the division shall be subject to the supervision of the state board of health. (Sec. 8 (3)).

11. Plan an air pollution control program for each area of the state and confer, review, and coordinate with each local air pollution control authority as required. (Sec. 8 (1) (e)).

VI. PROCEDURE

A. Local Government Authority

1. Home rule and second class cities, towns and counties as well as cities and counties are authorized to enact local air pollution laws providing for variances, hearings, judicial

review and injunctions consistent with this act. They may include the same standards or more restrictive ones than those established. Local laws may control any air contamination or source not subject to control under this act. (Sec. 6 (1)).

2. To the extent a local air pollution law adopted by a county is more restrictive than such a law adopted by any city or town within the county, the county law shall apply in lieu of the city or town law to the extent of the inconsistency. (Sec. 6 (3)).

3. Application, operation, and enforcement of valid local air pollution laws shall be completely independent of, but may be concurrent with, the application, operation, and enforcement of this act. The appointment of an air pollution control authority by the division shall in no way affect the duties and responsibilities given the same person or agency under a local air pollution law, and the appointment of an air pollution control authority by a local governmental unit shall in no way affect the duties and responsibilities given the same person or agency by the division. (Sec. 6 (4)).

4. Any local governmental authority enforcing air pollution control standards which shall issue any enforcement order or grant any variance shall, at the time of such issuance or granting, transmit to the division a copy of the order or variance. Any local governmental authority having adopted a local air pollution law prior to such date, shall transmit to the division a report setting forth sufficient information concerning any and all enforcement orders or variances, or both, issued or granted prior to the effective date of this act. (Sec. 6 (5)).

B. Enforcement

1. The public health department administrative division shall enforce compliance with emission standards. (Sec. 10 (1)).

2. When a written complaint is filed or the division has cause to believe a violation of standards exists, the division shall make a prompt investigation. A person making an investigation on behalf of the division shall promptly notify the division director if a violation is found. If it determines a violation does exist, it shall attempt by conference, conciliation and persuasion to eliminate the source of the air pollution or air contamination. (Sec. 10 (2)).

3. When conference, conciliation, or persuasion fails to correct or remedy such violation, the division shall issue and serve upon the alleged violator a written order which specifies the provision of the emission standards said to be in violation and a statement of the manner in which such person is said to violate it. The order shall require the person to cease and desist from such violation within a reasonable time which the division may determine. (Sec. 10 (3)).

4. Within ten days after receipt of such order, the recipient may file with the air pollution variance board a written request for a hearing as to whether or not such violation exists or for a variance, or both. Upon the filing of such a request, the order complained of shall be stayed pending the air pollution variance board's final determination. In the event the determination pertains solely to the question of whether or not a violation exists, the order shall be stayed an additional thirty days within which the recipient may file a written request for a variance. (Sec. 10 (4)).

C. Emergency Orders

1. Whenever the division shall determine, after investigation, that any person is discharging or causing to be discharged, directly or indirectly, into the atmosphere any air contaminant which constitutes a clear, present, and immediate danger to the health of the public, the division shall issue a written order to said person requiring immediate discontinuation of the discharge of such contaminant into the atmosphere; whereupon such person shall immediately discontinue such discharge. If such person continues the discharge, the division may apply to any state district court for the district in which the said discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction. (Colorado rules of civil Procedure). Such action in the district court shall be given precedence over all other matters pending in the court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceedings. (Sec. 9).

D. Variances

1. The board may grant a variance, suspending or modifying the enforcement of any emission standard, or any rule, regulation, or enforcement order issued pursuant to this act against any person, whenever the board shall determine that such variance would be consistent with the aid in implementing the legislative policy. (Sec. 11 (1)).
2. Whenever the said board determines that strict compliance with any provision of, or order issued pursuant to, this act would result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity and would be without sufficient corresponding public benefit. (Sec. 11 (2)).
3. The variance shall be granted, terminated, or modified only after a hearing before the air pollution variance board or a hearing officer. A variance may be granted with respect to any existing or proposed facility, process, or activity, regardless of whether it is located within or outside of any designated area of the state. Hearings may be requested either by the air pollution variance board, the division, or by any person applying for or having received such a variance. (Sec. 11 (3)).
4. A variance shall be granted for such period of time and under such conditions as shall be specified by the air pollution variance board. The failure to meet any condition of the variance without prior written permission of the board shall render the variance null and void. The board shall review, at least annually, any variance that has been granted to determine whether the terms and conditions of said variance have been complied with, and whether the continuance of the variance is justified. (Sec. 11 (4)).

E. Hearings

1. Hearings shall be conducted pursuant to the following provisions and 3.16, C.R.S. 1963. (Sec. 12 (1)).
2. The division may appear as a party in any hearing before the air pollution variance board and shall have the same rights to judicial review as any other party. (Sec. 12 (2)).

3. All testimony taken shall be under oath or affirmation. A full and complete record of all proceedings and testimony presented shall be taken and filed. The stenographer shall furnish, upon payment and receipt of any fees allowed therefor, a certified transcript of the whole or any part of his record to any party in such hearing requesting the same. (Sec. 12 (3)).

4. The public shall be heard to the extent deemed reasonable and proper by the board. (Sec. 12 (5)).

5. In all proceedings before the board with respect to alleged violations of any emission standard or order, the burden of proof shall be upon the division. (Sec. 12 (7)).

6. After due consideration of the written and oral statements, the testimony, and the arguments presented, the board shall enter its findings and final order, or make such final determination of the matter as it shall deem appropriate. (Sec. 12 (6)).

F. Confidential Information

Any information relating to secret processes, methods of manufacture or production obtained in the course of an inspection or which may be required, ascertained or discovered at a hearing shall be kept confidential. If samples of air or air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing such air pollution or air contamination. (Sec. 8 (2) (d), 12 (4)).

VII. JUDICIAL REVIEW

A. Any final order or determination by the air pollution variance board is subject to judicial review in accordance with 3.16, C.R.S. 1963.

Any party may move the court to remand the case to the board to adduce additional specified and material evidence, and findings thereon if such party can show grounds for failure to adduce such evidence previously before the board.

Any proceeding for judicial review shall be filed within 20 days of the final order or determination's date in the district court for the district where the affected air contamination source is located. (Sec. 13).

B. Injunctions

If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative review, the division may request the district attorney for the district in which the alleged violation exists or the attorney general to bring a suit for an injunction to prevent any further or continued violation of such order. It shall be his duty to bring such a suit. Any finding of the air pollution variance board shall be prima facie evidence of the fact or facts found therein. An injunction proceeding may be consolidated with judicial review of any final order or determination of the air pollution variance board. (Sec. 14).

VIII. VIOLATIONS AND PENALTIES

1. Any person who in any designated area of the state shall violate any of the emission standards specified in this act and effective in such area, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars. Each day during which such a violation occurs shall constitute a separate offense. (Sec. 15 (1)).
2. Any person who shall violate any emission standard specified in any local air pollution law, within the jurisdiction of the local governmental unit enacting the same, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars. Each day during which such a violation occurs shall constitute a separate offense; however, no person shall be prosecuted pursuant to both state and local laws for the same activity. (Sec. 15 (2) (3)).
3. Each facility, process, and activity that is a source of air contamination shall be deemed to be in full compliance with the emission standards specified either in this act or in any local air pollution law unless and until a cease and desist order, issued with respect to such facility, process, or activity has become final by exhaustion of all rights to administrative and judicial review, including any variance proceedings. (Sec. 15 (4)).

4. Any person who violates section 5 (4) of this act by burning or permitting any burning without first having obtained a permit as required, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars. Each day during which such a violation occurs shall constitute a separate offense. (Sec. 15 (5)).

IX. SCOPE AND CONSTRUCTION

1. The basis for proceedings or other actions that shall result from violations of any standard inure solely to and shall be for the benefit of the people of the state generally and it is not intended to create in any way new or enlarged private rights or to enlarge existing private rights, or to diminish private rights. (Sec. 16 (1)).

2. A determination that air pollution or air contamination exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state. (Sec. 16 (2)).

3. The provisions of this act shall not apply to air pollution insofar as such pollution exists within the confines of particular commercial or industrial plant, works, or shop which is the source of such pollution and also shall not apply or affect the relations between employers and employees with respect to or arising out of any condition of air pollution. (Sec. 16 (3)).

4. It is the purpose of this act to provide additional and cumulative remedies to prevent and abate air pollution and air contamination. Nothing contained in this act shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provision of this act or anything done by virtue of this act be construed as stopping individuals, cities, towns, counties, cities and counties, or the state or duly constituted political subdivisions thereof from the exercise of their respective rights to suppress nuisances. (Sec. 16 (4)).

5. This act provides for severability. (Sec. 18).

Colorado -- Continued

X. REPEAL

Article 24 of Chapter 66, C.R.S. 1963 and Chapter 58, 1964 Session Laws are repealed.

XI. APPROPRIATION

Fifth thousand dollars (\$50,000) is appropriated to the state department of public health.

XII. EFFECTIVE DATE

Approved March 11, 1966.

2. Burning Regulations

No person shall burn or permit to be burned on any open premises owned or controlled by him, or on any public street, alley, or other land adjacent to such premises, any rubbish, waste paper, wood, or other flammable material, unless a permit therefor shall first have been obtained from the appropriate authority enforcing air pollution control standards. In granting or denying the issuance of any such permit, said authority shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area when the same may violate any standard in this section, climatic conditions on the day or days of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area. (Sec. 5 (4) (a)).

The following are exempt:

1. Burning in the course of any agricultural operation in the growing of crops;
2. Fires used for noncommercial cooking of food for human beings or for instructional or recreational purposes;
3. Incineration of paper and other trash on residential premises by the owner or occupant thereof;
4. Smokeless flares or safety flares for the combustion of waste gases; or
5. Flares used to indicate some danger to the public.
(Sec. 5 (4) (b)).

3. Motor Vehicle Pollution Control

A Joint Resolution the Colorado Legislature resolved that the Department of Revenue include crankcase ventilation systems in the items of automotive equipment required to be inspected on those vehicles which are factory-equipped with the same (House Joint Resolution No. 1022, adopted, February 26, 1964).

No gasoline powered automobile or truck manufactured in the United States shall be issued an official certificate of inspection and approval unless it is equipped with a crankcase ventilating system designed to prevent the emission of air contaminants which contribute or which are likely to contribute to a condition of air pollution.

The manufacturer of new gasoline propelled automobiles and trucks of a model year later than 1965 shall, prior to the sale of such vehicles in the state, certify in writing to the Department of Revenue that such vehicles are equipped with such crankcase systems. (Colorado revised statutes sec. 13-5-148).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Connecticut 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

Public Law 754, Laws 1967 creates an air pollution control commission authorized to promulgate regulations on a statewide or regional basis, to hold hearings as to air pollution upon complaints received or upon the commissions own initiative, and to sue for injunctive enforcement of commission orders and regulations and for a penalty. The Commissioner of Health is given the executive authority to carry out the Commission's program.

Summary abatement provisions for pollution emergencies are provided as are provisions for variances.

Individual or joint action by local governmental bodies is permitted if the ordinances so promulgated conform to the state air pollution regulations.

A tax exemption for air pollution abatement equipment approved as such by the Air Pollution Control Commission is provided for.

A clean air task force of no fewer than one hundred electors of the state is created to give an advisory report to the Governor and the 1969 Session of the General Assembly.

"Air pollution" means the presence in the outdoor atmosphere of one or more air pollutants or any combination thereof in such quantities and of such characteristics and duration as to be, or be likely to be, injurious to public welfare, to the health of human, plant or animal life, or to property, or as unreasonably to interfere with the enjoyment of life and property. (Sec. 1)

"Person" includes every individual, firm, partnership, association, syndicate, company, trust, corporation and any other legal entity. (Sec. 1)

1/ Citations refer to Public Act 754, Laws 1967.

II. ADMINISTRATIVE ORGANIZATION

A ten member air pollution control commission is created. The members are to be appointed by the governor. No member is to be a state employee; one is to be a physician, one a professional engineer experienced in air pollution control technology, one shall be employed by an electric utility, one shall be employed by a manufacturing industry, and six members shall represent the general public. A member's term of office is three years. Five members constitute a quorum. Members receive no compensation for their services. (Sec. 2)

The Commissioner of Health is empowered to initiate research and educational programs, and to cooperate with and receive money from the Federal government and, with the approval of the governor, from any other public or private source. (Sec. 3)

The Air Pollution Control Commission is empowered to promulgate regulations to control and prohibit air pollution throughout the state or in such areas of the state as are affected thereby. These regulations may only be promulgated after public hearing and the regulations are to be effective sixty days after publication in the Connecticut Law Journal. Any person heard at the public hearing is to be given written notice of the determination of the Commission. The burning of solid or liquid fuels or buildings under the direct control and supervision of qualified instructors at a Fireman's training center is exempted from regulation by the Air Pollution Control Commission. (Sec. 4(a))

The Air Pollution Control Commission shall have the power to initiate and receive complaints as to air pollution; hold hearings, enter orders and institute legal proceedings, including suits for injunctions, for the enforcement of its orders and regulations in accordance with this act. (Sec. 4(b))

After the Air Pollution Control Commission has adopted regulations relating to controlling, reducing or prohibiting air pollution, the Commissioner of Health shall enforce such regulations on behalf of the Air Pollution Control Commission and for that purpose shall have the power to enter and inspect any building or place, except private residences, for the purpose of investigating sources of air pollution and ascertaining compliance with any such regulation. All information gained by such inspection shall be kept confidential except as it relates directly to air pollution. The Commissioner shall also have the power to initiate and receive complaints concerning air pollution and shall file such complaints with the Commission in his discretion. (Sec. 6)

Connecticut -- Continued

III. HEARINGS

The Air Pollution Control Commission may sit as a body or may designate a subcommittee of at least three members, or the Commission may designate a member of the Commission or a member of its staff to act as a hearing examiner. (Sec. 7)

The attendance of witnesses and the production of evidence and testimony may be compelled at such hearings. (Sec. 7)

Upon written complaint, or when he has reason to believe that any person is violating any regulation adopted by the Air Pollution Control Commission, the Commissioner of Health shall investigate the situation, and if he finds that a violation exists, he shall endeavor by conciliatory techniques, to eliminate any source or cause of air pollution. (Sec. 8)

If conciliatory techniques fail, within a reasonable time the Commissioner of Health is to issue a written order specifying a reasonable period of time within which the person alleged to be committing such violation is to correct or remedy the violation. (Sec. 9(a))

A Commission hearing on the order can be had on the request of the person alleged to be committing the violation. (Sec. 9(b))

After this hearing, the Air Pollution Control Commission shall determine whether the person against whom the order has been issued is violating a Commission regulation and whether the order is appropriate. (Sec. 10). Information as to secret processes or methods shall be kept confidential. (Sec. 10)

IV. PENALTIES

Any person found by the Air Pollution Control Commission to have violated any regulation of the Commission shall be liable for a penalty not to exceed five hundred dollars per week, commencing the tenth day after the expiration of the time fixed for the taking of preventive or corrective measures in the Commission's order. The penalty may be collected in a civil action in the superior court for the county wherein the pollution originates. If such preventive or corrective measures are not taken in accordance with the order of the Commission, the Commission may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any further violation of such regulations. (Sec. 11)

V. EMERGENCY ORDERS

In the event of an air pollution emergency requiring immediate action to protect the public health or safety, the Commissioner of Health may order any person causing air pollution to reduce or discontinue air pollution immediately. If such a summary order is issued, a hearing is to be held before the Commission in not later than forty-eight hours. (Sec. 12).

VI. JUDICIAL REVIEW

Commission orders and decisions may be appealed to the superior court. Any person aggrieved by an order of the Air Pollution Control Commission, in a proceeding on an order of the Commissioner of Health, may appeal within thirty days of the receipt of notice of the decision of the Commission. (Sec. 13(b)).

Any person whose interest is substantially affected by the entry of any order or decision of the Commission may, within fifteen days of the entry of such order or decision, appeal therefrom to the superior court for the county wherein the major portion of the affected property lies, notice of which appeal shall be filed with the secretary of the Commission. (Sec. 13(a)).

VII. VARIANCES

After public hearing, (Sec. 14(b)), the Air Pollution Control Commission may grant exemptions from its regulations. In the discretion of the Air Pollution Control Commission, these exemptions may be limited in duration. (Sec. 14(c)).

Applications for exemptions are to contain, or the applicant shall furnish, such information and data as the Air Pollution Control Commission may require. (Sec. 14(a)).

An application for an exemption from Commission regulations may be made by any person who owns or is in control of any plant, building, structure, process or equipment. (Sec. 14(a)).

The Air Pollution Control Commission, if it finds that the discharges occurring or proposed to occur do not constitute a danger of public health or safety, and compliance with the regulations from which exemption is sought would produce practical difficulty or hardship without equal or greater benefits to the public, may grant an exemption as to the quality, nature, duration or extent of discharges of air pollutants. (Sec. 14(a)).

VIII. LOCAL AIR POLLUTION CONTROL DISTRICTS

Upon prior approval of the Commission, any city or town, pursuant to ordinance, may join with any other city or town or combination thereof in the formation of a district for the control of air pollution. (Sec. 16).

Local air pollution regulations or ordinances are to be in conformity with state air pollution regulations, and each such ordinance or regulation is to be submitted to the State Air Pollution Control Commission and shall take effect sixty days thereafter unless disapproved by the State Commission. (Sec. 17).

IX. SAVINGS CLAUSE

Section 18 provides that prior municipal ordinances or regulations for the control of air pollution may remain in effect if they do not conflict with any provision of law or any state air pollution regulation. A municipal ordinance or regulation may impose stricter controls than those of state air pollution regulations. (Sec. 18).

X. ADVISORY GROUP

A Clean Air Task Force of no fewer than 100 electors of the state appointed by the governor by reason of their knowledge and concern in the air pollution control field is authorized. (Sec. 22(a)).

The Clean Air Task Force is to make recommendations to the governor and the 1969 Regular Session of the General Assembly for a comprehensive, long-range air pollution control program. (Sec. 22(b)).

XI. EFFECTIVE DATE

July 6, 1967.

2. Tax Exemption

Structures and equipment acquired after July 1, 1967, for the primary purpose of reducing, controlling or eliminating air pollution, and certified as approved for such purpose by the Air Pollution Control Commission are exempt from taxation. (Sec.19).

An exemption is provided from the tax on gross receipts from the sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities, the primary purpose of which is the reduction, control or elimination of air pollution, certified as approved for such purpose by the Air Pollution Control Commission. (Sec. 21).

If the above provisions in Sections 21 and 22 as to property and gross receipts taxes are not utilized by a taxpayer, the taxpayer may take a credit against the tax imposed by chapter 208, 209, 210, 211, 212, and 213 of the General Statutes of five percent of the expenditures paid or incurred during an income year for the planning, construction and acquisition of air pollution abatement facilities approved by the Air Pollution Control Commission if such construction or acquisition was commenced after January 1, 1967. This five percent credit may be carried forward for up to four successive income years. (Sec. 21).

3. Motor Vehicle Pollution Control

On and after January 1, 1968, no passenger motor vehicle designated as a 1968 or later model shall be registered in this state unless equipped with an effective air pollution control device. The Commissioner of Motor Vehicles may make regulations establishing standards for such devices, which standards shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The Commissioner of Motor Vehicles shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law. (Public Act 676, Laws 1967)

4. Motor Vehicle Junk Yards, Burning 1/

Section 21-22a., adopted in 1959 provides:

"Each new location of motor vehicle junk yards shall be completely surrounded with a solid fence...and any burning of material...must be carried on within this enclosure. Permits for such burnings shall be obtained from local authorities."

1/ Citations refer to General Statutes of Connecticut.

5. Interstate and State Study 1/

The Interstate Sanitation Commission, composed of Connecticut, New Jersey and New York is authorized to make a study of air pollution within the boundaries of New Jersey and New York. The State of Connecticut is not to be liable for any of the expenditures necessary for the undertaking nor to be called upon to appropriate any funds for the purpose (§ 25-66(a)).

In 1957 Connecticut enacted a statute directing various State agencies to undertake studies regarding the need for changes in and additions to laws and regulations administered by each of them that would arise from the presence within the State of special nuclear materials and by-product materials. The agencies are directed to propose necessary legislation. Among the agencies included is the State department of health which is directed to study "hazards...to the public health and safety, including, without limitation, air pollution..." (§ 19-408).

1/ Citations refer to General Statutes of Connecticut.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Delaware 1/

1. Delaware Water and Air Resources Commission

I. GENERAL STATEMENT

Chapter 442 of 1966 laws regulates the development and conservation use of water, underwater lands and air. It abolishes the water pollution, air pollution and geological commissions and creates a water² and air resources commission. This provides programs for the utilization and pollution control of the resources and protection and conservation thereof. It also provides programs of research and development and cooperation with other agencies and utilities.

II. DEFINITIONS

- A. "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property within the jurisdiction of the State, excluding all aspects of employer-employee relationships as to health and safety hazard. (§ 7.6202(a)).
- B. "Air Contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof. (§ 7.6202(b)).
- C. "Air Contaminant Source" is any source from which there is emitted into the atmosphere any air contaminant including all types of commercial and industrious plants and works, heating and power plants and stations, shops and stores; buildings and other structures, including single and multiple family residences, apartment houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings; automobiles, trucks, tractors, buses and other motor vehicles; garages, vending and service locations and stations; railroad locomotives; ships, boats and other waterborne craft; portable fuel-burning equipment; incinerators of all types, indoor and outdoor; and refuse dumps and piles. (§ 7.6202(c)).

III. DELAWARE WATER³ AND AIR RESOURCES COMMISSION

A. Composition and Organization

1/ All citations refer to Delaware Code Annotated, 1953.

2/ There will be no further mention of water or underwater land.

3/ All powers and duties concerned with water will be omitted.

The commission shall consist of seven commissioners appointed by the governor plus two ex-officio members: The governors alternate on the Delaware River Basin Commission and the State Geologist.

The commissioners shall be as follows: The Wilmington City Water Commissioner, one each from Wilmington City, New Castle County, Kent County and Sussex County. Distribution among political parties shall be four to three. The commissioners shall have two year terms, but the chairman shall serve at the pleasure of the governor. Commissioners will receive no compensation, but are entitled to necessary expenses in performance of duty.

The commission shall meet as it determine with a majority of the members constituting a quorum. It will make an annual report to the governor and general assembly. (§ 7.6002, .6004, .6005).

B. Powers and Duties

The commission shall have the following powers:

- (1) To develop a comprehensive program for the prevention and control of all air pollution sources of the state. (§ 7.6203(1)).
- (2) To advise, consult and cooperate with other agencies of the state, political subdivision, industries, other states, the Federal government and with affected groups and receive money therefrom for the study of resources pollution and to represent this state in any and all matters pertaining to plans, procedures or negotiations for interstate compacts in relation to air pollution control. The commission may cooperate with and receive moneys from the Federal government or any industry or other source. Such moneys received are appropriated and made available for the study of water and air resources and pollutions. (§ 7.6203 (2) (12), 7.6016).
- (3) To encourage and conduct studies, investigations and research relating to air pollution and its causes, prevention, control and abatement, to collect and disseminate information relating to air pollution, its prevention and control; and to encourage voluntary cooperation by the people, municipalities, counties, industries and others in restoring and preserving the purity of air within the state. (§ 7.6203 (3) (4) (8)).

Delaware -- Continued

- (4) To promulgate rules and regulations and issue orders consistent with the purposes of this Chapter including regulations of the installation of new equipment which will emit air contaminants and to enforce compliance with the laws of this State relating to pollution of the air. (§ 7.6203(5)(11)).
- (5) To consider complaints, make investigations and hold hearings; and to enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to air pollution. (§ 7.6203(6)(10)).
- (6) To require any person to submit plans for the removal of air contaminants. (§ 7.6203(7)).
- (7) To select advisory committees to study and advise upon specific problems which may arise from time to time and to employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts. (§ 7.6203(13)).
- (8) To give due recognition to the quantity and characteristics of air contaminants or the duration of their presence in the atmosphere which, while causing air pollution in one area of the State, may cause less or no air pollution in another area. It shall consider such factors as existing physical conditions, zoning classifications, prevailing wind direction and speed and that a rule applicable to a residential area may not be proper for a highly developed industrial area. (§ 7.6203).

IV. EXECUTIVE DIRECTOR

The Executive Director shall be appointed by the Commission and shall have professional training in the field of water or air resources management. He shall recommend other employees, agents and consultants for appointment.

Subject to the Commissions control, he shall be in charge of its day to day operations, keep proceedings records, and preserve commission books, maps and papers. (§ 7.6003).

V. PROCEDURE

A. Rules

The Commission may adopt rules and regulations and issue general and special orders, upon approval in writing by at least five members. Such rule, regulation or order requires 20 days published notice in a newspaper of general circulation in the State and in each county of the State (§ 7.6011).

Delaware -- Continued

B. Enforcement

The commission will try by conference, conciliation or persuasion to obtain compliance by a violator. If this cannot be obtained, written notice specifying the complaint will be given such person requiring correction within a specified time or that he appear before the commission. The notice will be served as summons or by registered mail. (§ 7.6006).

C. Hearings

Hearings are to be held with respect to any permit, lease variance or grant application or to hear a complaint against an alleged violator by any commission member or a designated representative. Subpoenas may be issued at the request of the applicant or alleged violator. The Superior Court of the involved county has jurisdiction to enforce a hearing notice or subpoena upon commission request.

Proceedings records, findings and conclusions shall be taken and filed by the commission. A final order, based on the presented evidence, shall be entered by the commission and written notice given to the affected person. (§ 7.6007, .6008, .6009).

D. Variances

Variances may be granted only after a hearing by the commission. (§ 7.6007).

E. Emergency Action

When conditions require immediate action, the commission may issue a written order to the responsible person requiring immediate discontinuation of harmful contaminant discharge. A hearing will be held as soon as possible concerning the discharge effect. (§ 7.6206).

F. Confidential Information

It shall be a misdemeanor for any commission member, employee or consultant to disclose confidential information obtained while performing his duties or to use any information obtained for any purpose other than function, responsibility and duty administration. (§ 7.6014).

Delaware -- Continued

VI. FEES

A fee schedule for filing a permit, lease or grant application may be established by the Commission. The necessary expenses for processing the application and conducting a hearing may also be collected. (§ 7.6018).

VII. JUDICIAL REVIEW

A. Appeals

- (1) When a person's interest is substantially affected by any action of the Commission, he may file with the Commission Secretary an appeal notice within 20 days of the rule or order notice mailing by the Commission. Such appeal shall be signed by the appellant or his attorney. (§ 7.6012(a)).
- (2) When immediate action is required to protect public health, the commission order or rule shall be stayed pending appeal disposition. (§ 7.6012(b)).
- (3) Appeals shall be taken in the Superior Court of the county where the circumstances causing the appeal originated. The appeal shall be heard and determined as a case in law and equity. (§ 7.6012(d)(e)).

VIII. VIOLATIONS AND PENALTIES

A fine of not more than \$500 shall be levied for each violation failure or refusal. Each day of continued violation shall be a separate offense. The Superior Court shall have jurisdiction of offenses. (§ 7.6013)

IX. SCOPE AND CONSTRUCTION

Nothing in this act shall preclude any city or town governing body's right to adopt local laws, ordinances or regulations consistent with this act and which do not call for a lesser degree of control.

X. EFFECTIVE DATE

July 1, 1966. Approved, July 1, 1966.

2. Nuisances

The discharge into the air of solids, liquids or gases causing injury to human, plant or animal life or property constitutes a public nuisance. It is illegal to cause, erect or continue any such nuisance.

Proceedings to abate air pollution created nuisances may be instituted at law or in equity in the name of the state or on behalf of the commission. (§ 7.6205).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

District of Columbia 1/

I. GENERAL STATEMENT

Reorganization Order No. 57, as amended November 7, 1961, applying to the Department of Public Health, gives the Department the responsibility for the coordination and development of a comprehensive air pollution program. The Commissioners promulgated this order pursuant to § 6-801, which prohibits the discharge of dense smoke from any building, stationary or locomotive engine, or motor vehicle, place or premises within the District, and § 6-804, which allows them to delegate their enforcement power to the police or public health departments or any officer of the District. Title 6, Chapter 8 of the D. C. Code was enacted by Congress as P. L. 74-279.

At present there are scattered laws and regulations with respect to emission of pollutants, which are administered by several agencies.

II. DEPARTMENTAL RESPONSIBILITIES

A. Department of Public Health

The Department of Public Health is charged with controlling the pollution caused by dusts, noxious odors and gases, pursuant to the prohibitions of the Consolidated Ordinances of the Board of Health, legalized by Joint Resolution of Congress, April 24, 1880, as amended.

(1) Office of the Director

The functions of the Office of the Director include:

- a. Developing major programs, policies, and regulations on air pollution and proposing them to the Board of Commissioners (Reorg. Order No. 57, III, A, 1);
- b. Collaborating with the U. S. Public Health Service, D. C. departments and other agencies in the Washington area in performing research and in surveying and monitoring the air in order better to develop an air pollution control program;

1/ Citations refer to District of Columbia Code, 1961, unless otherwise specified.

District of Columbia -- Continued

- c. Reviewing and analyzing the effectiveness of air pollution inspections and controls on motor vehicles, buildings and open fires administered by other departments and proposing changes consistent with program objectives;
- d. Coordinating all phases of the air pollution program within D. C. and assisting in coordinating programs in the entire metropolitan area; and
- e. Keeping the public informed on air pollution matters (Reorg. Order No. 57, III, A. 14).

(2) Bureau of Environmental Health

The functions of the Bureau include:

- a. Sampling of gaseous contaminants in the air;
- b. Coordinating study of air pollution damage to plants;
- c. Preparing for the Director periodic reports on the air pollution activities of all D. C. departments and agencies involved in the program; and
- d. Notifying the public of impending or potential temperature inversion periods (Reorg. Order No. 57, III, H, 4).

B. Department of Licenses and Inspections

Reorganization Order No. 55, as amended, gives the Department of Licenses and Inspections the responsibility of enforcing the fuel burning equipment regulations of the District (adopted pursuant to Title 6, chapter 8, D. C. Code), and charges its Inspection Division with evaluating the effectiveness of the existing air pollution regulations and proposing changes in them necessary to achieve the overall air pollution control objectives.

C. Department of Motor Vehicles

Organization Order No. 105, as amended, charges the Department of Motor Vehicles with the responsibility of inspecting motor vehicles for the prevention of air pollution. Section 144 (b) of the Traffic and Motor Vehicle Regulations prohibits motor vehicle emissions as dark as or darker than Ringelmann No. 2.

District of Columbia -- Continued

III. PENALTY

Violation of the statutory provisions or a regulation is punishable by a fine of up to \$500 for each offense (§ 6-803).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Florida 1/

1. Air Pollution Control

I. POLICY STATEMENT

The pollution of the air of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, and impairs domestic agricultural, industrial, recreational, and other beneficial uses of air.

It is declared to be the public policy of this State and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this State and facilitate the enjoyment of the natural attractions of this State.

It is declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air pollution prevention, abatement and control for the securing and maintenance of appropriate levels of air quality.

It is hereby declared that the prevention, abatement and control of the pollution of the air of this State are affected with a public interest, and the provisions of this State for the purpose of protecting the health, peace, and safety, and general welfare of the people of this State.

The legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air resources in the State of Florida and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to insure conservation of natural resources, to insure a continued safe environment, to insure purity of air, protection and preservation of the public health, safety, welfare, and economic well-being, to insure and provide for recreational and wildlife needs as the population increases and the economy expands, to insure a continuing growth of the economy and industrial development. (§ 3).

1/ Citations refer to Senate Bill No. 520, Approved August 1, 1967.

II. DEFINITIONS

- (1) "Pollution" is the presence in the outdoor atmosphere or waters of the State of any one or more substances or contaminants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
- (2) "Contaminant" is any substance which is harmful to plant, animal or human life.
- (3) "Person" means the State or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation. (§ 4(3), (5), and (12)).

III. ADMINISTRATIVE ORGANIZATION

There is hereby created and established the Florida Air and Water Pollution Control Commission. The Commission shall be composed of the Governor, the Secretary of State, the Attorney General, the Commissioner of Agriculture, and two citizens appointed by the Governor and confirmed by the Senate. The Governor shall serve as the Chairman of the Commission. Members of the Commission shall serve without compensation, but shall be entitled to per diem and travel expenses. (§ 5).

IV. MEETINGS; HEARINGS; AND PROCEDURE

- A. The Commission shall hold regular meetings not less than quarterly and such additional meetings as may be required. Meetings may be called by the Governor or at the request of a majority of the Commission.
- B. All rules or orders of the Commission which require action to comply with standards adopted by it, or orders to comply with any provisions of this act, may specify a reasonable time for such compliance. No rule or regulation shall be adopted by the Commission except after public hearing held for that purpose after 30 days prior notice given in the manner which the Commission shall prescribe. The manner prescribed shall at least include notice by mail to all parties known by the Commission to be affected by the matters under consideration and some system of newspaper publication reasonably calculated to bring the matter under consideration to the attention of the general public.

Florida -- Continued

- C. The decision of the Commission to adopt, modify or repeal a rule or regulation shall be based solely on the preponderance of the competent substantial evidence presented at the public hearing.
- D. A quorum of the Commission shall consist of four members and a majority vote of the entire Commission shall be required to take action on any matter before it.
- E. The Commission shall have the power, and upon application of any affected party shall have, the duty, to compel the attendance of witnesses and the production of evidence on behalf of the State or any affected party.
- F. The Attorney General shall represent the State and its agencies as legal advisor in carrying out the provisions of this act. (§ 6, 16, and 24).

V. POWERS AND DUTIES

- (1) Approve and promulgate current and long-range plans developed to provide for air control and pollution abatement.
- (2) Hire only such employees as may be necessary to effectuate the responsibilities of the Commission.
- (3) Utilize the facilities and personnel of other State agencies, and delegate to any such agency any duties and functions as the Commission may deem necessary.
- (4) Secure necessary scientific, technical, research, administrative and operational services by interagency agreement, contract, or otherwise.
- (5) Accept State appropriations, loans and grants from the Federal Government and from other sources, public or private.
- (6) Exercise general supervision of the administration and enforcement of the laws, rules and regulations pertaining to air pollution.
- (7) Adopt, modify and repeal rules and regulations to carry out the intent and purposes of this act. Any rules or regulations adopted pursuant to this act shall be consistent with provisions of Federal law, if any, relating to control of emissions from motor vehicles.

- (8) Hold hearings relating to the adoption of rules to control or prohibit air pollution, including hearings upon complaints for violations.
- (9) To designate a hearing officer to conduct hearings, who shall have the power to issue notices of hearings, subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths and to take testimony as may be necessary, and such hearing officer shall certify and file with the Commission recommendations, findings of fact, and a proposed order; provided, however, that all hearings for the adoption of rules shall be before the Commission.
- (10) Issue such orders as may be necessary to effectuate the control of air pollution and enforce the same by all appropriate administrative and judicial proceedings.
- (11) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air of the state.
- (12) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof.
- (13) a. Cause field studies to be made and samples to be taken out of the air of the state periodically and in a logical geographic manner so as to determine the levels of air quality of the air.

b. Whenever a study is made or a sample collected which proves to be below the air quality standard set for air, then the Commission shall determine the source of the pollution.
- (14) Require persons engaged in operations which may result in pollution, to file reports which may contain information relating to locations, size of outlet, height of outlet, rate and period of emission and composition and concentration of effluent and such other information as the Commission shall prescribe to be filed relative to pollution.
- (15) Establish a permit system whereby a permit may be required for the operation, construction or expansion of any installation that may be a source of air or water pollution.

- (16) Consult with any person proposing to construct, install, or otherwise acquire a pollution control device or system, concerning the efficacy of such device or system, or the pollution problem which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules and regulations of the Commission, or any other provision of law.
- (17) Require that notice be given to it prior to the undertaking of the construction or installation or expansion of any new air contaminant sources. The Commission shall require, as a condition precedent to the construction or installation or expansion of such sources, the submission of plans, specifications, and such other information as it deems necessary in order to determine whether the proposed construction or installation will be in accord with applicable laws, rules and regulations. If the Commission determines that the proposed construction or installation will not be in accord with the requirements of this act or applicable rules and regulations, it shall issue an order prohibiting the construction or installation.
- (18) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act.
- (19) Encourage local units of government to handle pollution problems within their respective jurisdictions on a cooperative basis, and provide technical and consultative assistance therefor.
- (20) Encourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement and control.
- (21) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and make recommendations to appropriate public and private bodies with respect thereto.
- (22) Collect and disseminate information and conduct educational and training programs relating to pollution.

Florida -- Continued

- (23) Advise, consult, cooperate, and enter into agreements with other agencies of the State, the Federal Government, other States, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules or policies of the Commission.
- (24) Perform any other act necessary to control and prohibit air pollution, and to delegate any of its responsibilities, authority and powers, other than rule-making powers, to the Director or any State agency. (§ 7).

VI. DIRECTOR; POWERS AND DUTIES

There shall be a Director of the Commission who shall be employed by the Commission. The Commission shall fix the Director's compensation unless it is otherwise provided by law. The Director shall possess experience in bioenvironmental or sanitary engineering and such other qualifications as the Commission may prescribe. It shall be the duty of the Director to:

- a. act as the Chief Administrative Officer for all environmental pollution control programs of the State;
- b. formulate and recommend rules and regulations for approval or rejection by the Commission;
- c. coordinate all pollution control programs of the State carried on from time to time by all State agencies; and
- d. act as agent for the Commission in all matters relating to its activities and the discharge of its responsibilities. (§ 8).

VII. INSPECTIONS

Any duly authorized representative of the Commission may enter and inspect any property, premises or place, except a building which is used exclusively for a private residence, on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the State of compliance with the law, or rules and regulations of the Commission. No person shall refuse immediate entry or access to any authorized representative of the Commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status. (§ 10).

VIII. CLASSIFICATION AND REPORTING

- (1) The Commission, by rule or regulation, may classify air contaminant sources, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic, social and recreational factors, and physical effects on property.
- (2) Any person operating or responsible for the operation, the rules and regulations of the Commission require reporting of air contaminant sources of any class for which shall make reports containing information as may be required concerning location, size and height of contaminant outlets, or duration of emissions, and such other information as to processes employed, fuels used and the nature and time period relevant to air pollution and available or reasonably capable of being assembled. (§ 11).

IX. CONFIDENTIAL RECORDS

Any information relating to secret processes, methods of manufacture or production which may be required, ascertained or discovered by inspection or investigation, shall not be disclosed in public hearings and shall be kept confidential by any member, officer or employee of the Commission. Provided, that nothing herein shall be construed to prevent the use of such records in judicial proceedings in connection with the prosecution of violations of this act, when ordered to be produced by appropriate subpoena or by order of the court. No such subpoena or order of the court shall abridge or alter the rights or remedies of persons affected in the protection of trade secrets or secret processes, in the manner provided by law, and such persons affected may take any and all steps available by law to protect such trade secrets or processes. (§ 12).

X. ENFORCEMENT; PROCEDURE

- (1) If the Commission has reason to believe a violation of any provision of this act has occurred, it shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the law, rule or

regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that corrective action be taken within a reasonable time. No such order shall become effective except after reasonable notice and the order is served upon the person or persons named therein and a hearing held if requested within the time specified in the notice; except that injunctive relief may be sought.

- (2) If, after hearing, the Commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions or pollution involved or for the taking of such other corrective action as may be appropriate. Any order issued prior to a hearing as a part of a required notice or any order issued after a hearing may prescribe the date by which the violation shall cease by fixing reasonable timetables for necessary action to prevent, abate or control the pollution. If after hearing on an order contained in a notice, the Commission finds that no violation is occurring, it shall rescind the order.
- (3) All testimony taken at any such hearing before the Commission shall be under oath or affirmation. A full and complete record of all proceedings and testimony presented shall be taken. Upon application of any party, the Commission shall compel the attendance of witnesses and the production of evidence. (§ 13).

XI. INJUNCTIVE RELIEF; EMERGENCY PROCEDURE

If preventive or corrective measures are not taken in accordance with any order of the Commission, or if the Director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the Director shall institute proceedings in a court of competent jurisdiction for injunctive relief. Such injunctive relief may include both temporary and permanent injunctions. (§ 14).

XII. PROHIBITION, VIOLATION, PENALTY, INTENT.

It shall be unlawful for any person to cause the pollution of any of the air of this State in violation of or by failure to comply with any order of the Commission, including orders or rules fixing standards of air quality, or permits issued pursuant to its authority.

Violation is punishable by a civil penalty of not more than \$1,000.00 for the first offense and of not more than \$1,000.00 for each offense thereafter. Each day during any portion of which such violation occurs constitutes a separate offense.

Violation of any order issued by the Commission is a misdemeanor and is punishable by imprisonment for not more than one year or a fine of not more than \$1,000.00 for each violation. Each day during any portion of which such violation occurs constitutes a separate offense. (§ 17).

XIII. JUDICIAL REVIEW

Any party aggrieved by any action of the Commission may seek appropriate judicial review. (§ 18).

XIV. CONSTRUCTION IN RELATION TO OTHER LAW

- (1) It is the purpose of this act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the air of the State. Nothing contained herein shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act, or any act done by virtue thereof, be construed as stopping the State or any municipality, or person affected by air pollution, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.
- (2) No civil or criminal remedy for any wrongful action which is a violation of any rule or regulation of the Commission shall be excluded or impaired by the provisions of this chapter. (§ 20).

XV. VARIANCES.

- (1) Upon application the Commission in its discretion may grant a variance for any one of the following reasons:
 - a. There is no practicable means known or available for the adequate control of the pollution involved.
 - b. Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

- c. To relieve or prevent hardship of a kind other than those provided for. Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months.
- (2) The Commission or its duly designated Hearing Officer shall hold a hearing on each application for a variance.
- (3) The Commission may prescribe such time limits and other conditions to the granting of a variance. (§ 21).

XVI. REGULATIONS VALIDATED

Any regulations adopted or orders issued by the Florida Air Pollution Control Commission and effective in any air pollution control district on the effective date of this act and rules, regulations and orders of the State Board of Health relating to air quality or pollution, are hereby validated and shall continue in effect and be enforced until repealed by the Commission. (§ 22).

XVII. EFFECTIVE DATE

September 1, 1967

2. Local Programs 1/

- (1) Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with the Air and Water Pollution Control Act. Local pollution control programs in existence on the effective date of the act shall not be ousted of jurisdiction if such local program complies with the act. All local pollution control programs, whether established before or after the effective date of the act, must:
 - a. Be approved by the Commission as adequate to meet the requirements of this act and any applicable rules and regulations pursuant thereto.
 - b. Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by this act and regulations issued thereunder.
 - c. Provide for the enforcement of such requirements by appropriate administrative and judicial process.
 - d. Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program.
- (2) The Commission shall have the exclusive authority and power to require and issue permits; provided, however, that the Commission may delegate its power and authority to local pollution control organizations if the Commission finds it necessary or desirable to do so.
- (3) If the Commission finds that the location, character or extent of particular concentrations of population, contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide pollution control program, the Commission may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct State administration.

1/ Citations refer to Senate Bill No. 520, Approved August 1, 1967

- (4) a. If the Commission has reason to believe that a pollution control program in force pursuant to this section is inadequate to prevent and control pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of the act, the Commission shall, on due notice, conduct a hearing on the matter.
 - b. If, after such hearing, the Commission determines that such program is inadequate to prevent and control pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of the act, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed ninety days.
 - c. If the municipality, county, or municipalities or counties fail to take such necessary corrective action within the time required, the Commission shall administer within such regulatory provisions of this act. Such pollution control program shall supersede all municipal or county pollution laws, municipality, county, or municipalities or counties all of the regulations, ordinances and requirements in the affected jurisdiction.
 - d. If the Commission finds that the control of a particular class of contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of contaminant source.
- (5) Any municipality or county in which the Commission administers its pollution control program pursuant to (4) above may, with the approval of the Commission, establish or resume a municipal or county pollution control program which meets the requirements of (1) above (§ 19).

3. Classification of Control Devices for Tax Purposes 1/

- (1) If it becomes necessary for any person, firm or corporation owning or operating a manufacturing or industrial plant or installation to construct or install a facility, in order to eliminate or reduce industrial air pollution, any such facility or facilities shall be deemed to have value for purposes of assessment for ad valorem property taxes no greater than its market value as salvage. Any facility as herein defined heretofore constructed shall be assessed in accordance with this section.
- (2) If the owner of any manufacturing or industrial plant or installation shall find it necessary in the control of industrial contaminants to demolish and reconstruct that plant or installation in whole or part and the tax assessor determines that such demolition or reconstruction does not substantially increase the capacity or efficiency of such plant or installation or decrease the unit cost of production, then in that event such demolition or reconstruction shall not be deemed to increase the value of such plant or installation for ad valorem tax assessment purposes.
- (3) Notwithstanding the foregoing provisions, nothing in this section shall prevent an increase in the assessment of the plant or installation:
 - a. In any year where the taxable property in the county is being reassessed or revalued; or
 - b. If the assessed value of such plant or installation or parts thereof, during the year preceding the removal, was less than its just value as required by section 1, article IX, of the Constitution of the State of Florida, and section 193.021, Florida Statutes; or
 - c. In the tenth year after the completion of the reconstruction and replacement and thereafter. The provisions of this subsection shall apply only if the demolition or removal shall commence prior to September 1, 1969, and if the reconstruction and replacements, in lieu thereof are completed and installed prior to September 1, 1971.

1/ Citations Refer to Senate Bill No. 520, Approved August 1, 1967

- (4) The terms "facility" or "facilities" as used in this section shall be deemed to include any device, fixture, equipment, or machinery used primarily for the control or abatement of pollution or contaminants from manufacturing or industrial plants or installations, but shall not include any public or private domestic sewage system or treatment works.
- (5) Any taxpayer claiming the right of assessments for ad valorem taxes under the provisions of this law shall so state in a return filed as provided by law giving a brief description of the facility. The tax assessor may require the taxpayer to produce such additional evidence as may be necessary to establish taxpayer's right to have such properties classified hereunder for assessments.
- (6) No sales, use or privilege taxes shall be collected with respect to any facility as herein defined nor shall any such tax be collected with respect to any structures, machinery or equipment installed in the reconstruction or replacement of such articles in the manner provided in (2) above. The Revenue Commission shall prescribe rules and regulations to implement this subsection.
- (7) If a tax assessor is in doubt whether a taxpayer is entitled, in whole or in part, to an assessment under this act, he may refer the matter to the Commission for a recommendation. The Commission shall immediately consider whether or not such taxpayer is so entitled and certify its recommendation to the tax assessor.
- (8) The Commission shall promulgate rules and regulations regarding the application of the tax assessment provisions of this act for the consideration of the several city and county tax assessors of this State. (§ 25).

4. Alachua County 1/

I. GENERAL STATEMENT

The 1963 Legislature established a policy of preserving the purity of the air and water of Alachua County and charged the Board of County Commissioners with the responsibility of so doing.

II. ADMINISTRATIVE ORGANIZATION

The Board of County Commissioners has jurisdiction to control water and air pollution in the county,

A. Powers of the board

The Board has the following powers: 2/

- (1) To establish such air purity standards as are required to maintain the health, welfare, and comfort of the citizens of the county, as determined by the County Health Officer and the Board (§ 1 and § 2);
- (2) To adopt reasonable rules and regulations to prevent air pollution by any person, firm or corporation residing, or doing business, within the County (§ 1);
- (3) To institute any lawful appropriate action or proceedings to prevent, restrain, correct or abate the violation of its purity standards (§ 3).

III. PENALTIES

Violation of any provision of this act, or the standards of purity adopted hereunder, is a misdemeanor punishable by a fine of up to \$500 or imprisonment for up to 30 days, or both (§ 4).

1/ Citations refer to H. Bill No. 1674 which became law without approval June 3, 1963.

2/ Provisions dealing with water pollution are omitted.

5. Brevard County 1/

I. GENERAL STATEMENT

The 1959 Legislature established a policy of preserving the highest standards of purity of the air and waters of Brevard County and made the Board of County Commissioners the Brevard County Pollution Control Commission. It is charged with:

- (1) Promotion of recreational resources;
- (2) Propagation and protection of wildlife;
- (3) Facilitation of the growth of desirable natural plant and animal life and industrial development of the County consistent with maximum employment and full industrial development of the County.

To accomplish these ends, it may require the use of all available and reasonable methods to prevent and control water and air pollution (§ 1).

Air pollution is defined as "The presence in the outdoor atmosphere of substances put there by man in concentrations sufficient to cause an unreasonable interference with the comfort, safety, or health of man or the unreasonable (sic) use and enjoyment of his property." (§ 2(2)).

II. ADMINISTRATIVE ORGANIZATION

The Board of County Commissioners is established as the Brevard County Pollution Control Commission (§ 1) with jurisdiction to control water and air pollution in the County (§ 3).

A. Functions of the Board

The Board has the following functions: 2/

- (1) To enforce provisions of the Act;

1/ House Bill 1839 which became law without approval June 20, 1959.
References are to sections of this Act.
2/ Provisions dealing with water pollution are omitted.

- (2) For this purpose, to adopt rules, regulations and standards consistent with available and reasonable methods of controlling or preventing pollution and consistent with the public welfare (§ 4).

In adopting regulations (§ 24), the Board shall take into account the reasonableness of the activities involved, including:

- a. The character and degree of injury to, or interference with the comfort, safety, health, and the reasonable use and enjoyment of property;
 - b. Social and economic value of activity involved;
 - c. Suitability of the activity to the area;
 - d. The scientific and economic practicability of reducing or eliminating the discharge.
- (3) When a pollution emergency exists, to bring action for relief against such pollution by injunction or abatement (§ 5).

B. In Carrying Out These Purposes the Board May:

- (1) Appoint a control officer to observe and enforce the provisions of the act and rules and regulations adopted pursuant to the act (§ 19).
- (2) Enter, or authorize the entry of, any property to inspect and investigate conditions of pollution of water or air (§ 8).
- (3) Request the aid of educational institutions or State agencies (§ 9).
- (4) Authorize variances from the rules and regulations it lays down if compliance with the rules and regulations would result in depriving persons of the use of their property, without corresponding advantage to the public in the control of air pollution (§ 20).
- (5) After considering the recommendations of the Brevard County Zoning Board, designate areas in which the otherwise prohibited erection of antennas, smokestacks, chimneys, and similar structures in excess of 150 feet in height will be permitted (H.Bill 1836, Reg. Session 1963, Law without Approval June 11, 1963).

III. RULES AND REGULATIONS

A. Rules and Regulations

Rules and regulations shall be adopted by the Board after a public hearing held after 10 days notice (§ 24).

B. Abatement

Whenever the control officer is of the opinion that a person is violating any provision of the Act or any rule or regulation relating to air pollution, he shall notify such person of his determination by registered mail. Within 15 days of the receipt of such notice that person shall file with the control officer a full report as to the steps taken or to be taken to control or prevent the alleged air pollution. The control officer may then issue his order setting forth the particulars in which the person is failing to comply with such rules and regulations and ordering him to remedy such failure within a stated time. The order shall be sent by registered mail to the person affected (§ 22).

C. Variance

The Board, on its own motion or that of any interested person, may hold a hearing to determine the extent, if any, and under what conditions it will permit variance from the requirements established by the Act as to air pollution. Ten days notice shall be given to the petitioner and to the control officer, if any, of the time and place of hearing (§ 20). In determining whether the variance shall be permitted, the Board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to residents of the area and to lawful business and activities in the area resulting from requiring compliance or permitting variance. If a change in conditions results in a substantial change in the equities and the advantages and disadvantages, the Board may revoke or modify the variance by written order held after 30 days notice to the persons or classes affected (§ 21).

IV. MISCELLANEOUS

A. Crimes and Offenses

Persons found guilty of wilfully violating any provision of the Act or final orders or directives of the Board or court issued in pursuance of the Act are guilty of a misdemeanor and may be punished by a fine of not more than \$250 or by imprisonment in the county jail for not more than one year or both. Each day in which such violation continues is a separate offense.

B. This Act does not apply to smoke from fire set or permitted by any public officer in the performance of his official duty:

- (1) For weed abatement.
- (2) For the prevention of fire hazards.
- (3) For instruction in methods of fire fighting.

Neither does this Act apply to smoke from agricultural fires set or permitted by the County Agricultural Agent in the course of his official duty:

- (1) For disease prevention.
- (2) For pasture control,
- (3) Agricultural or forest harvest operation (§ 23).

6. Broward County 1/

I. GENERAL STATEMENT

A. Senate Bill No. 1326, Regular Session 1963, which became law without approval June 19, 1963, authorizes the Board of County Commissioners of any county having 300,000-350,000 population according to the last Federal census (Broward County is the only one answering this description) to control air and water* pollution through a County Pollution Control Board, created by resolution. The production of air pollution is declared to constitute a nuisance.

B. "Air pollution" is defined as "the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business" (§ 3(3)).

"Air contaminants" include, but are not limited to, "smoke, charred paper, dust, soot, grime, carbon or any other particulate matter, or irritating, malodorous or noxious acids, fumes or gases, or any combination thereof, but shall not include uncombined water vapor" (§ 3(2)).

II. COUNTY POLLUTION CONTROL BOARD

A. Creation

By resolution of the Board of County Commissioners of any county having 300,000-350,000 population according to the last Federal census.

B. Organization

The Board shall consist of 9 unpaid members, appointed by the Board of County Commissioners to serve overlapping four-year terms. The members shall be permanent residents and freeholders electors of the County and representative, as follows: One practicing medical doctor, who may be

1/ All citations refer to S. Bill No. 1326, Reg. Session, 1963 which became law without approval June 19, 1963.
(*All further references to water pollution in the Act have been omitted.)

recommended by the County Medical Association; one professional engineer experienced in sanitary engineering, who may be recommended by the Local Chapter of the Florida Engineering Society; one actively engaged in agricultural operations; one actively engaged in the tourist industry; one representative of the conservation interests; one representative of industries or businesses directly affected by and subject to the provisions of this Act; and three representatives of the general public (§ 5).

Members shall elect a chairman from among themselves.

Five members shall constitute a quorum for any business, but any action must be approved by a majority of the entire membership.

Meetings shall be public, and may be called by the chairman or by written notice signed by five members.

The Board of County Commissioners shall provide such personnel as may be reasonably required by the Board for the proper performance of its duties (§ 6(1)).

C. Powers and Duties

The Board is empowered to:

- (1) Adopt and amend rules and regulations necessary for the control and regulation of air pollution, and provide for such control and regulation (§ 6(2)).
- (2) Provide for appropriate fees to be charged by the county for services rendered under this Act (§ 6(2)).
- (3) Make studies and periodic reports and recommendations for the improvement of air pollution control (§ 6(3)).
- (4) Cooperate with appropriate agencies and groups interested in the field of air pollution (§ 6(3)).
- (5) Investigate other air pollution control programs (§ 6(4));
and
- (6) Conduct a program of public education on air pollution and its control (§ 6(4)).

III. POLLUTION CONTROL OFFICER

- A. When a Pollution Control Board is established and subject to the approval of the Board of County Commissioners, the Director of the County Health Department shall appoint a Pollution Control Officer, who shall be a licensed professional sanitary engineer experienced in air pollution and shall be subject to the supervision of the Director (§ 7).
- B. The Pollution Control Officer is empowered to:
- (1) Enforce the provisions of this Act, the rules and regulations promulgated thereunder and those of the State Board of Health concerning air pollution (§ 8(1));
 - (2) Investigate complaints and recommend institution of actions necessary to abate nuisances caused by air pollution and prosecution of proceedings for violation of this Act (§ 8(4));
 - (3) Make surveys and inspections to determine whether the provisions of this Act are being complied with (§ 8(5));
 - (4) Inspect property, facilities, equipment and processes operating under the provisions of this Act to determine whether their operations are complying with it, and recommend methods by which air pollution may be reduced or eliminated (§ 8(6));
 - (5) Maintain, review, and supervise all operating records required to be filed by persons operating facilities or equipment subject to the provisions of this Act (§ 8(7));
 - (6) Render assistance and technical advice to persons engaged in operations which may cause air pollution (§ 8(8));
 - (7) Establish a program for monitoring air pollution by means of a countrywide air quality surveillance network (§ 8(9));
 - (8) Conduct a public information program on air pollution and its control (§ 8(10)).

- (9) Render aid to the Florida State Board of Health in connection with the review of plans, specifications and processes filed in accordance with the requirements of this Act (§ 8(11));
- (10) Cooperate with Federal, State, and local agencies relative to air pollution control (§ 8(12));
- (11) Enlist public support, the cooperation of business and industry, and the assistance of civic, technical, scientific, and educational organizations (§ 8(13));
- (12) Periodically file with the Director of the County Health Department reports on the status of air pollution in the County and the enforcement of this Act and the rules and regulations promulgated thereunder (§ 8(14)); and
- (13) Perform various and other administrative duties assigned him by the Board of County Commissioners or the Director of the County Health Department (§ 8(17)).

IV. PROCEDURES

A. Rules and Regulations

- (1) A public hearing of the Board, upon 10 days notice, must be held before any rule, regulation or amendment thereof may be adopted.
- (2) Before becoming effective, all rules, regulations and amendments adopted by the Board must be approved by the Board of County Commissioners and filed with the Clerk of the Board (§ 6(2)).

B. Enforcement - Pollution Control Officer

(1) Normal

If he finds or learns of a violation of this Act or the rules and regulations, the Pollution Control Officer shall serve a notice to correct or a citation to cease violation upon the alleged violator. This notice or

citation shall set forth the general nature of the violation, and shall specify a reasonable time for compliance with its provisions. If voluntary corrective action is not forthcoming, the Pollution Control Officer shall, with the approval of the Director of the County Health Department, issue an order to cease operation of the offending facility, institute legal proceedings to compel compliance, or initiate proceedings to prosecute the violator for violation of this Act (§ 9).

(2) Emergencies

If a violation of this Act or the rules and regulations creates an immediate health hazard or threatens immediate serious damage to public health or property, the Pollution Control Officer, with the approval of the Director of the County Health Department, may order immediate cessation of the operation causing such conditions. Willful failure to comply with such order shall be a misdemeanor, and each day of such failure shall constitute a separate offense (§ 10).

C. Appeals - County Air Pollution Control Board

- (1) Any person aggrieved by any action or decision of the Pollution Control Officer may appeal to the Board by filing within 15 days of such decision a written notice of appeal specifying the decision and the grounds for appeal.
- (2) The Board shall hear such appeal at the earliest possible date, and shall serve notice of hearing on the appellant and the Pollution Control Officer.
- (3) After hearing, the Board may affirm, reverse, or modify the action or decision appealed from, provided only that it not act in conflict with the provisions of this Act.
- (4) There shall be no rehearing or reconsideration of the Board's decision on the administrative level (§ 11).

V. COURT REVIEW

Any person aggrieved by a decision of the Board on an appeal may apply for appropriate relief to the Circuit Court of the County (§ 11).

VI. PROHIBITION AND PENALTY

- A. It shall be unlawful for any person to cause, or allow to be discharged into the air from any single source of emission any air contaminant as a visible emission, particulate matter, or sulfur dioxide, which exceeds the limits for time, total quantities and ground level concentrations as may be established in the rules and regulations (§ 12).
- B. Violation of this Act or the rules and regulations shall be a misdemeanor (§ 15).

VII. APPROPRIATIONS

In each fiscal year, the Board of County Commissioners may budget and expend funds needed to carry out an adequate air pollution control program. This appropriation shall be specifically designated for use in air pollution, and used for the designated purpose exclusively (§ 13).

VIII. CONSTRUCTION AND SEVERABILITY

- A. The provisions of this Act shall be liberally construed, provided that they shall not be construed as conflicting with provisions of the State Board of Health, the Air Pollution Control Commission or the State Board of Conservation nor as imposing a mandatory duty upon any Board of County Commissioners to establish a County Control Board (§ 16).
- B. If any part of this Act is held invalid, the remainder shall not be affected (§ 17).

7. Duval County 1/

I. GENERAL STATEMENT

The 1965 Legislature created the Duval air improvement Authority to control and regulate activities causing or able to cause injurious air pollution. The legislature also provided for injunctive relief, appeals from the Authority's actions, and for prohibitions against air pollution. The law specifically prohibits any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any source of emission whatsoever any air pollutant which exceeds the limits for time, total quantities and concentrations as may be established by the rules and regulations of the Authority (§ 16).

II. DEFINITIONS

- (1) "Person" means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally. (§ 2(2)).
- (2) "Air pollutants" are particulate matter, gas or odor, including smoke, charred paper, dust, soot, grime, or irritating, malodorous or noxious acids, fumes, or gases, or any combination thereof, but shall not include uncombined water vapor. (§ 2(7)).
- (3) "Air pollution" is the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property or which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business (§ 2(8)).
- (4) "Combustible pollutant" is a particulate matter discharged into the atmosphere from the burning of any kind of material containing carbon in a free or combined state. (§ 2(9)).

1/ Citations refer to House Bill No. 1675, approved June 24, 1965, as amended by House Bill No. 1780, Law without approval June 30, 1967, and House Bill No. 2988, Law Without Approval August 4, 1967.

- (5) "Combustible refuse" is any combustible waste material containing carbon in a free or combined state. (§ 2(10)).
- (6) "Condensed fumes" are minute solid particles generated by condensation of vapors from solid matters, volatilization from the molten state, or which may be generated by chemical processes, operation or reactions, when such processes create airborne particles. (§ 12(11)).
- (7) "Particulate matter" is any material which is emitted into the atmosphere in a finely divided form as liquid or solid or both, but shall not include uncombined water vapor. (§ 12(18)).
- (8) "Standard conditions" means at ground level, a pressure of 14.7 pounds per square inch absolute, and a temperature of 68 degrees F. Results of all analyses and tests shall be reported at this gas temperature and pressure as applied to ground level or stack conditions. (§ 12(19)).

III. DUVAL AIR IMPROVEMENT AUTHORITY

A. Composition and Organization

The Authority consists of five members appointed by the Governor and confirmed by the Senate. One member shall be the State Health Officer or his designated representative, one shall be a Jacksonville city commissioner designated by the Commission to supervise health and sanitation, one shall be a Duval county commissioner, one shall be a "discreet citizen" and one shall be an industry or business representative concerned with air pollution provisions. All members shall be residents and freeholder electors of the county and shall be appointed for four-year terms. Members shall receive no compensation but will be reimbursed for actual expenses involved in performing their duties. (§ 3.1, .2) (§ 6).

Before entering upon the duties of their office, members shall take, and file with the Secretary of State, the constitutional oath of office, and shall give a good and sufficient surety bond of ten thousand dollars payable to the Governor and his successors in office, conditioned upon the faithful performance of his duties. The Governor may suspend any member for misfeasance, malfeasance, gross inefficiency or misconduct, or upon any of the constitutional grounds upon which officers may be suspended by the Governor.

The members shall elect a Chairman and a Secretary and other officers they deem necessary. Three members constitute a quorum, but a majority vote of the entire membership shall be necessary to take any action (§ 6).

The Chairman may call Authority meetings as may three members by signing a written notice. The Authority may fix future meeting dates at any meeting (§ 6).

B. Powers and Duties

The Authority shall have the following duties, rights, privileges and powers:

- (1) To adopt, revise, and amend appropriate rules reasonably necessary for the implementation and enforcement, administration and interpretation of the provisions of the act, and to provide for the effective and continuing control and regulation of air pollution in the county and to provide for appropriate fees to be charged by the Authority for the services rendered by it. It shall have its rules and regulations printed for distribution to any person upon request. (§ 7(1)(2)).
- (2) To administer and enforce the laws and rules relating to air improvement. (§ 7(3)).
- (3) To make continuing studies and periodic reports and recommendations for the improvement of air pollution control in the county, and to work in cooperation with the State Board of Health and other appropriate agencies and groups and to investigate and visit air pollution control programs and activities in operation in other areas and to make recommendations for the improvement of the regulation, administration and enforcement of air pollution control in the county; to publicize the importance of adequate pollution control, to hold public hearings, and to arrange programs for the presentation of information by experts in the field. (§ 7(4)(5)).
- (4) To enter into contracts with public agencies and private consultants to the extent necessary to accomplish the purposes of the laws and the duties imposed upon the Authority and to cooperate with and receive money from the Federal government or any county or municipal government or from private sources for the study and control of air pollution (§ 7(6)(12)).

- (5) To conduct investigations and hearings upon complaints and to take testimony on any matter under its jurisdiction and any member thereof may administer oaths. The Authority, through its secretary, shall have the power to issue subpoenas for witnesses and the production of documents and, by direction of the Chairman of the Authority, compulsory process to compel the attendance of such persons and the production of evidence. The Director may serve such subpoenas or compulsory process or cause the same to be served by any peace officer within the territorial area of Duval County. (§ 7(7)(8)(9)).
- (6) To employ such personnel and incur necessary expenses (§ 7(11)).
- (7) To require the registration of persons engaged in operations which may result in air pollution and the filing of reports containing information relating to location, size and height of outlet, rate and period of emission and composition of effluent and other information as the Authority shall prescribe. (§ 8(1)).
- (8) To enter and inspect any building or place, except private residences, to investigate an actual or suspected source of air pollution and ascertain compliance or noncompliance with its rules and regulations. (§ 8(2)).
- (9) To budget its operation expenses and to certify such budget to the Board of County Commissioners and the Budget Commission of Duval County prior to June first of each year commencing with the first day of October. The Budget Commission shall review such budget and approve it as they deem advisable. The Board of County Commissioners shall levy a tax annually on all taxable real and personal property in such county to produce the amount of the authorized budget. The tax collector shall remit all moneys collected, and the same shall be deposited in a bank or banks qualified as depositories of public funds, to be designated by the Authority, (§ 9(a)(b)(c)).
- (10) To purchase, lease or otherwise acquire land, buildings and personal property necessary to the efficient accomplishment of the purposes of law. The Authority may sell, lease, convey or trade any land, building, or personal property owned by it, when such property or properties are no longer needed (§ 10(1)(2)).

(11) Records and Inventory

A record and inventory of certain property owned by the district shall be maintained in accordance with Section 274-02, F. S. (§ 11).

(12) Audit

The Authority shall set up and maintain books and records under a method approved by the State auditing department and be subject to audit by same.

- (13) To issue annual financial reports of its operations and shall cause annual audits to be made of its operation and affairs by a certified public accountant who resides in Duval County, in such detail as may be necessary to show the financial operation and status of the Authority to be preserved as a public record. Said audits shall be made in accordance with the rules, regulations and forms prescribed by the State Auditor. A copy of each shall be furnished without charge to the Board of County Commissioners and the State Auditor, each of which shall acknowledge receipt thereof. (§ 23).

- (14) To enforce the following standards for sulphur dioxide, which have been emitted in the ambient air in inhabited areas:

<u>Time Period</u>	<u>SO₂ Content, Maximum</u>
24-hour average	0.08 parts per million
1-hour average	0.20 parts per million
5-minute average	0.50 parts per million

Whenever the foregoing criteria are exceeded, the person causing the emission shall convert to a special fuel which will result in concentrations of sulphur, in the ambient air in inhabited areas which will meet the foregoing criteria and any such fuel conversion shall apply until such time as these criteria can be met without the use of such special fuel; provided that the use of fuels which do not have a sulphur content in excess of two percent by weight until the end of 1968, one and one-half percent by weight until the end of 1969, and one percent by weight thereafter shall be deemed to be in compliance with the foregoing criteria. (§ 7(13)).

C. Jurisdictional Limit

- (1) The requirement for filing of reports shall be conditional upon either the consent of the person engaged in operations which may result in air pollution or the direction of the Authority which direction may be issued only after a hearing upon notice to the person engaged in such operation. (§ 8(1)).
- (2) The right to enter and inspect shall be conditional upon either the consent of the owner or lessee of the premises or the direction of the Authority, which direction may be issued only after hearing upon notice to the owner or lessee of the premises. Before any entry and inspection is made, the person who is to make the same shall sign a statement in the presence of and witnessed by a notary public or other officer qualified to take acknowledgment, that all information shall be kept confidential except as it relates directly to air pollution. (§ 8(2)).
- (3) Records and Inventory

A record and inventory of certain property owned by the district shall be maintained in accordance with Section 274-02, F.S. (§ 11).

D. Contract Award

All construction, reconstruction, repairs or work of any nature made by the Authority, and all supplies, equipment, machinery and materials purchased by the Authority, amounting to more than \$1,500.00, shall be let by contract to the lowest and best responsible bidder according to written specifications previously prescribed therefor after Jacksonville city general circulation daily newspaper publication once a week for at least two weeks of notice calling for such bids. The first publication is to be not less than ten days before the date for receiving bids. The Authority shall have the right to reject all bids and may readvertise for bids. No members of the Authority or officer or employee thereof shall directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with the Authority for any matter, cause or thing in which such member, officer or employee shall have a financial interest or by reason whereof any liability or indebtedness shall be created

against the Authority. If any contract or agreement shall be made in violation of the provisions of this section, the same shall be null and void and no action shall be maintained thereon against the Authority. (§ 24).

E. Execution of Instruments

All instruments in writing necessary to be signed by the Authority shall be executed by the Chairman and Director and authenticated by the Seal of the Authority. No expenditure of funds of the Authority other than for payroll labor, shall be made except by voucher approved by the Authority and signed by its Chairman and Director. The foregoing authority of the Chairman may be exercised by the Vice-chairman in the absence of the Chairman and the foregoing authority of the Director may be exercised by the secretary of the Authority or an acting secretary designated by the Authority in the absence of the secretary. The Authority shall provide for the examination of all payrolls, bills and other claims and demands against the Authority to determine before the same are paid that they are duly authorized, in proper form, correctly computed, legally due and payable, and that the Authority has funds on hand to make payment. (§ 25).

IV. DIRECTOR

- A. The Director shall be appointed by the Authority and shall be a duly registered professional engineer qualified to practice in Florida with prior experience in the air pollution control field. He shall report directly to the Authority. (§ 14).
- B. The Director shall have the following duties and powers:
- (1) To enforce the provisions of the law and the rules and regulations of the Authority, and to investigate complaints, to study and observe air pollution conditions, and to make recommendations as to institution of action necessary to abate nuisances caused by air pollution and as to prosecutions for violations. (§ 15(1)(4)).

- (2) To establish, operate and maintain a continuing program for monitoring air pollution by means of county-wide air surveillance networks designed to provide accurate data and information as to whether the level of air pollution is increasing or decreasing throughout the county and to make appropriate surveys, tests and inspections to determine whether air pollution is being effectively controlled throughout the county, and to conduct tests in order to determine compliance with the law and the rules and regulations. The tests shall be conducted in accordance with recognized sampling and analysis procedure and good engineering practice. (§ 15(9)(5)(15)).
- (3) To maintain, review and supervise all operating records required to be filed by persons operating facilities and equipment subject to the provisions of the law, to make inspections of property, facilities, equipment and processes operating to determine whether the provisions are being complied with, and making recommendations for methods by which air pollution may be reduced or eliminated, and to render all possible assistance and technical advice to persons operating such equipment, facilities and processes, provided that he shall not design equipment or facilities for any person. (§ 15(7) - (6)(8)).
- (4) To publish and disseminate information to the public concerning air pollution and recommendation of methods for decreasing and eliminating air pollution, and to enlist and encourage public support and cooperation of industrial and business enterprises and organizations. (§ 15(10)(13)).
- (5) To render all possible cooperation and assistance to Federal, State and local agencies in accomplishment of the effective control of air pollution and to assist the State Board of Health in connection with the review of filed plans, specifications and processes. (§ 15(12)(11)).
- (6) To prepare a table of organization for staff members employed to assist him; determining and making recommendations as to the qualifications of such personnel and to prepare a detailed annual budget. (§ 15(2)(3)).

- (7) To make periodic reports concerning the status of air pollution in the county and enforcement of the provisions of the law and the rules and regulations and recommendations concerning the improvement of pollution control requirements to be filed with the Chairman of the Duval Air Improvement Authority and made available to interested parties. (§ 15(14)).

(8) Prohibitions Against Pollution

It shall be unlawful for any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any source of emission whatsoever any air pollutant which exceeds the limits for time, total quantities and concentrations as may be established by the rules and regulations of the Authority. (§ 15(16)).

V. PROCEDURE

A. Rules and Regulations

- (1) A majority vote of the entire membership is required to take any action. (§ 6).
- (2) It shall be unlawful for any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any source of emission whatsoever any air pollutant which exceeds the limits for time, total quantities and concentrations as may be established by the rules and regulations of the Authority. (§ 16).

B. Complaints

All complaints made to the Authority regarding a violation of the law or rules and regulations adopted pursuant thereto, shall be made in a form prescribed by the Authority, however, this shall not limit the Authority's Director in initiating complaints and issuance of notices. (§ 17(1)).

C. Hearings

- (1) After evidence has been obtained or received establishing a violation, the Director shall issue a notice to correct or a citation to cease the violation, and shall cause

the same to be served upon the violator by personal service, certified mail or by posting a copy in a conspicuous place on the premises of the facility causing the violation. The notice or citation shall state the general nature of the violation and specify a reasonable time within which the violation shall be rectified or stopped. The notice shall be in triplicate, with the alleged violator, the Director and the Authority Secretary each receiving a copy. (§ 17(2)).

- (2) If a violation is not corrected within the specified time, the Director shall proceed to initiate a hearing before the Authority. He shall file a written complaint with the Authority in which he is designated as the complainant and the accused violator is the respondent. As many persons may be joined in one proceeding as are alleged to have participated in the alleged violation. A copy of the complaint and a notice of hearing upon the respondent shall be issued by the Director, either personally or by registered or certified mail, at least 20 days before the hearing date. Proof of service shall be filed with the Secretary and recorded in the minutes of the Authority. (§ 17(3)(5)).
- (3) The complaint shall be in writing and shall include but not be limited to the following: the name of the accused; his last known address; the number and the nature of the charges, which if true, would constitute one or more violations; a statement to inform the respondent that he may, but need not, be represented by counsel; that he is entitled to the issuance of subpoenas to compel the attendance of witnesses, the production of books, documents or other evidence relevant to the matter to be heard and that failure to appear may result in a default being entered and action taken according to the evidence before the Authority. All complaints, unless dismissed by the Authority shall be heard within a reasonable time after the date upon which they were preferred. The time and place of said hearing shall be fixed by the Authority. (§ 17(4)).
- (4) Hearings shall be held before the Authority but may be continued for good cause shown, from time to time, and in proper cases the Authority may allow the time deemed necessary to comply with the provisions of law or rules and regulations of the Authority. (§ 17(8)(16)).

- (5) The testimony of any material witness residing within or without the State may be taken by deposition in the manner and for the purposes provided by the Florida Rules of Civil Procedure. (§ 17(7)).
- (6) The Director, the attorney for the Authority or duly authorized representative, shall present witnesses or other evidence to support the charges contained in the complaint. After the Director shall have rested case, the respondent shall present his defense. The Authority shall not be bound to strict rules of procedure or by the laws of evidence in the conduct of proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. (§ 17(8)(b)(c)).
- (7) Every party to a hearing shall have the right to call and examine witnesses and to introduce documentary evidence relevant to the issues of the case. Oral evidence shall be taken only upon oath or affirmation administered by any member of the Authority. (§ 17(8)(d) - (e)).
- (8) The proceedings of the hearing shall be reported stenographically and also recorded by machine recording equipment. (§ 17(8)(f)).
- (9) After the hearing, the Authority shall consider all the evidence offered and shall decide the issue based upon such evidence as soon as possible. If the decision is for the respondent, the Authority shall dismiss the proceeding and it shall be so stated in the order entered in the matter. If the Authority shall determine that the respondent is guilty of the charge and charges set forth in the complaint, it may institute action to compel compliance with provisions of such notice of citation issued by the Director or initiate proceedings to prosecute the violator for violation of this act. Immediately upon the entry of the final order by the Authority, a copy thereof shall be delivered to the respondent and his counsel, if any, either personally or by registered or certified mail. (§ 17(9)(a)(b)(c)). (§ 17(10)).

Florida -- Continued

- (10) The records of the Authority shall reflect the action of the Authority upon the charges. (§ 17(9)(d)).

- (11) Rehearing

The Authority shall have the discretion to grant a rehearing, if applied for within thirty (30) days. However, for good cause, the time may be extended. (§ 17(11)).

D. Emergency Proceedings

In the event a violation creates an immediate health hazard or threatens immediate serious damage to public health, or threatens or causes irreparable damage to human, animal, plant life or property, the Authority may apply to the Circuit Court for a temporary or permanent injunction to restrain and enjoin such offender from violating or continuing to violate the provision of the law; provided, however, no temporary injunction shall be issued without bond or without a hearing of which Respondent or Respondents has or have been given not less than four days prior notice, and no temporary injunction shall be granted which shall limit or prevent operations of an industrial, manufacturing, processing or utility plant, unless at such hearing the Plaintiff shall establish by clear, certain, and convincing evidence that irreparable injuries will result to the public from the failure to grant the same. If any temporary injunction is improvidently or erroneously granted, suit may be instituted against the Authority or its sureties on the bond, but no judgment in excess of the amount of the bond may be awarded against the Authority. (§ 18).

E. Confidential Information

- (1) Any information obtained during inspection of any building or place shall be kept confidential except as it relates to air pollution. If samples are taken for analysis, they shall be taken in the presence of a representative of the company. A duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution. (§ 8(2)).

Florida -- Continued

- (2) Any information as to secret processes or methods of manufacture or production shall not be disclosed in public hearings before the Authority but shall be described in the brief statement when appropriate. Such information shall be kept confidential by members of the Authority when so requested by the person submitting same. (§ 8(3)).

VI. INJUNCTIONS

In addition to the provided remedies and notwithstanding the existence of any adequate remedy at law, the Authority is authorized to make application for injunction to the Circuit Court of Duval County, and such court shall have jurisdiction upon a hearing and for cause shown to grant a permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or the rules and regulations of the Authority or from failing or refusing to comply with the requirements of this chapter. (§ 20).

VII. JUDICIAL REVIEW

Judicial review of decisions or orders of the Authority shall be in accordance with the Administrative Procedures Act, Chapter 120, Florida Statutes, or as otherwise provided by law. (§ 19).

VIII. VIOLATIONS AND PENALTIES

It shall be unlawful for any person to willfully fail or refuse to comply with an order of the Authority; and any person who shall willfully fail or refuse to comply with an order of the Authority shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished accordingly. Each day during which the willful failure or refusal to comply with such order continues shall constitute a separate offense. (§ 21).

IX. SCOPE AND CONSTRUCTION

That so long as this law shall remain in effect no air control district shall be created within Duval County under the provisions of Chapter 403, Florida Statutes. This act shall be liberally construed. (§ 22).

X. EFFECTIVE DATE

October 1965; Approved June 24, 1965

8. Sarasota County 1/

I. AUTHORITY OF COUNTY COMMISSIONS

- A. The Board of County Commissioners of Sarasota County is authorized to adopt an air pollution code to correct, remove or prevent air pollution in all its forms, including smoke, vapors, dust and wind borne matter originating within the area to which the code is applicable.
- B. Code to be adopted after public hearing which shall be known as the Sarasota Air Pollution Control Code (§ 4).

II. APPLICABILITY OF CODE

- A. Code is to apply to all areas in Sarasota County outside the corporate limits of any municipality (§ 1).
- B. Any municipality may adopt the provisions of the act and thereafter its territory is included within the area to which the Code is applicable (§ 2).

III. ADMINISTRATION

- A. The Board may establish inspection fees to defray the costs of inspection and enforcement (§ 5).
- B. An employee of the county may be designated to act as air pollution control inspector. (§ 6).

IV. ENFORCEMENT

- A. After adoption of Code, it is unlawful for any person to construct, reconstruct, alter, repair or use prohibited fuel and refuse burning plants, processes, equipment and devices without a permit (§ 8).
- B. The Board may revoke any permit upon a determination that the activity for which the permit was issued is in violation or not in conformity with the Code (§ 8).
- C. Violations of the Act or Code are declared to be misdemeanors (§ 11).
- D. In addition to other remedies, the Board may institute an appropriate action in a court of record to enforce the Act, the Code or any order, requirement or decision pursuant thereto (§ 10)

1/ Citations refer to House Bill No. 1951, Law Without Approval June 17, 1959, as amended by House Bill No. 161, Law Without Approval April 26, 1961.

- E. Exempted from this Act are the burning or incineration of domestic waste, trees, stumps and brush accumulated as part of land clearing operations and any incineration for domestic purposes (§ 8).
- F. An authorized representative of the Board may enter any premises or building except one- and two-family dwellings with the consent of the owner or occupant for the purpose of inspection or to prevent violation of the Act. Such representative is relieved of all personal liability for damage to persons or property as a result of any act required or permitted in the discharge of his official duties. (§ 6).

V. APPEALS

- A. Any person aggrieved by administrative action taken under the Act or the Code may appeal to the Board for a hearing within 60 days of the action.
- B. A notice of public hearing is to be published by the Board which may require the appellant to pay in advance the cost of publication of the notice. This payment will be refunded if the action complained of is not fully affirmed on appeal.
- C. In hearing such appeals, the Board may obtain the testimony of expert witnesses and pay them witness fees.
- D. After the hearing, the Board shall affirm, modify or reverse, in whole or in part, the action appealed from (§ 8).

VI. EFFECTIVE DATE

June 17, 1959.

9. St. Lucie County 1/

I. GENERAL STATEMENT

It is prohibited to discharge or permit or allow discharge by any employee or agent into the air in St. Lucie County any smoke, vapor or gas in such quantity as is liable to affect the health of persons, birds, livestock, or vegetation, or damage property, or any noisome odors or noxious gases in such quantity as to create a nuisance (§ 2).

II. ADMINISTRATIVE ORGANIZATION

The Board of Commissioners of St. Lucie County and the State Board of Health, by injunction or other legal means, enforce both the Act and any rules, regulations, or criteria established by the State Board of Health to control air pollution (§ 3).

III. PENALTIES

Violation of this Act is a misdemeanor; conviction thereof in a court of competent jurisdiction may result in a fine of not more than \$500, and each day of violation constitutes a separate offense (§ 4).

IV. MISCELLANEOUS

The Act is subject to approval by referendum (§ 7).

1/ Citations refer to sections in Chapter 31238, Acts of 1955.

10. Lake County 1/

I. DEFINITIONS

"Air contaminants" means particulate matter, gas or odor, including but not limited to, smoke, charred paper, dust, soot, grime, carbon or any other particulate matter, or irritating, malodorous or noxious acids, fumes or gases, or any combination thereof, but shall not include uncombined water vapor. (§ 2(a)).

"Air pollution" shall be construed to mean the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or conduct of business. (§ 2(b)).

II. ADMINISTRATIVE ORGANIZATION

The Lake County Air and Water Pollution Control Board shall consist of five members appointed by the Board of Lake County Commissioners. (§ 4).

The Board may employ a pollution control officer (§ 7).

III. POWERS AND DUTIES OF THE BOARD

- (1) To adopt, revise, and amend from time to time appropriate rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act, and to provide for the effective and continuing control and regulation of air pollution in the county within the framework of this act; (§ 5(b)).
- (2) To make continuing studies and research and periodic reports and recommendations for the improvement of air pollution controls in the County, and to work in cooperation with all other State and Federal agencies and other appropriate agencies and groups interested in the field of air pollution; (§ 5(c)).
- (3) To investigate air pollution control programs and activities in operation in other areas and to make recommendations for the improvement of the regulation, administration and enforcement of pollution controls in the County; (§ 5(d)).

1/ Citations refer to House Bill No. 967, Law without approval May 24, 1967.

- (4) To publicize and educate the public as to the importance of adequate pollution controls; (§ 5(d)).
- (5) To hold hearings, discussions, forums and institutes, and arrange programs for the presentation of information by experts in the field of air pollution, and to visit and study pollution control programs conducted in other areas; (§ 5(d)).
- (6) To establish research projects with other government agencies to determine methods of improving pollution removal by the air pollution prevention facilities; and (§ 5(h)).
- (7) To enter into contracts or agreements with the United States or any agency or instrumentality thereof, or with any other county, municipality, district, authority or political subdivision, private corporation, partnership, association or individual providing for or relating to any matters relevant or otherwise necessary to effect the purposes of this act, and to receive and accept grants or loans for or in aid of the planning, construction, reconstruction, improvement or financing of any water quality and control facilities and any other matters relevant thereto or otherwise necessary to effect the purposes of this act. (§ 5(i)).

IV. POWERS AND DUTIES OF THE POLLUTION CONTROL OFFICER

- (1) Enforcement of the provisions of this act and the rules and regulations adopted by the Board; (§ 7(a)).
- (2) Investigation of complaints, study and observation of air pollution conditions, and recommendations as to institution of actions necessary to abate nuisances caused by air pollution; (§ 7(d)).
- (3) The right to enter upon and make inspections of property, facilities, equipment, and processes operating under the provisions of this act to determine whether the provisions of this act are being complied with, and making of recommendations for methods by which air pollution may be reduced or eliminated. Any information relating to secret processes, methods of manufacture or production which may be required, ascertained, or discovered by inspection or investigation shall be kept confidential; (§ 7(g)).

Florida -- Continued

- (4) Establishing, operating and maintaining a continuous program for monitoring air pollution. (§ 7(j)).

V. APPROVAL

It shall be unlawful for any persons, firms, corporations, companies, institutions, municipalities or communities to install, extend or alter any air pollution prevention facility and its related appurtenance for use in the County without first having received written approval of the plans, specifications and other related material from the Pollution Control Officer. (§ 8).

VI. VIOLATIONS; NOTICE

Whenever evidence has been obtained or received establishing that a violation of this act or any rules or regulation adopted pursuant thereto has been committed, the Pollution Control Officer shall issue a notice to correct the violation or a citation to cease the violation. If the violation is not corrected within the time so specified or the violation stopped, or reasonable steps taken to rectify the violation, the Pollution Control Officer, with the approval of the Board, shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility or may institute action to compel compliance with the provisions of such notice or citation, or initiate proceedings to prosecute the violator. (§ 10).

VII. EMERGENCY

In the event a violation of this act or the rules and regulations promulgated pursuant to this act creates an immediate health hazard or threatens immediate serious damage to the public health, or threatens or causes irreparable injury or damage to property, the Pollution Control Officer shall have the power and authority to order immediate cessation of the operations causing such conditions. (§ 11).

VIII. APPEALS

Any person aggrieved by any action or decision of the Pollution Control Officer may appeal to the Board. The Board shall hear and consider all facts material to the appeal, and render a decision. Persons aggrieved by a Board decision may apply to the circuit court of the County for appropriate relief. (§ 12).

11. Seminole County 1/

I. DEFINITIONS

"Air contaminants" shall mean a particulate matter as defined herein, gas or odor, including but not limited to, smoke, charred paper, dust, soot, grime, carbon or any other particulate matter, or irritating, malodorous or noxious acids, fumes or gases, or any combination thereof, but shall not include uncombined water vapor. (§ 3(a)).

"Air pollution" shall be construed to mean the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business. (§ 3(b)).

II. ADMINISTRATIVE ORGANIZATION

The Seminole County Pollution Control Board shall consist of five members appointed by the Board of Seminole County Commissioners. (§ 5).

The Board may employ a pollution control officer. (§ 7).

III. POWERS AND DUTIES OF THE BOARD

- (1) To adopt, revise, and amend from time to time promulgated rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act, and to provide for the effective and continuing control and regulation of air pollution in the county within the framework of this act. (§ 6(b)).
- (2) To make continuing studies and research and periodic reports and recommendations for the improvement of air pollution controls in the County, and to work in cooperation with all other State and Federal agencies and other appropriate agencies and groups interested in the field of air pollution. (§ 6(c)).

1/ Citations refer to House Bill No. 2853, Law Without Approval, June 30, 1967.

- (3) To investigate air pollution control programs and activities and to make recommendations for the improvement of the regulation, administration and enforcement of pollution controls in the County. (§ 6(d)).
- (4) To establish ambient air quality standards for the County as a whole or any part thereof. (§ 6(f)).
- (5) To establish research projects with other government agencies to determine methods of improving pollution removal by the air pollution prevention facilities. (§ 6(h)).
- (6) To enter into contracts or agreements with the United States or any agency or instrumentality thereof, or with any other county, municipality, district, authority or political subdivision, private corporation, partnership, association or individual, and to receive and accept grants or loans, aid or contributions of either money, property, labor or other things of value, to be held, used and applied only for the purpose for which such grants, contributions or loans may be made. (§ 6(i)).

IV. POWERS AND DUTIES OF THE POLLUTION CONTROL OFFICER

- (1) Enforcement of the provisions of this act and the rules and regulations adopted by the Board. (§ 8(a)).
- (2) Investigation of complaints, study and observation of air pollution conditions, and recommendations as to institution of actions necessary to abate nuisances caused by air pollution. (§ 8(d)).
- (3) Entrance upon and making of inspections of property, facilities, equipment, and processes to determine whether the provisions of this act are being complied with, and making of recommendations for methods by which air pollution may be reduced or eliminated. Any information relating to secret processes, methods of manufacture or production which may be required, ascertained or discovered by inspection or investigation, shall be kept confidential. (§ 8(g)).

- (4) Establishing, operating and maintaining a continuous program for monitoring air pollution. (§ 8(j)).

V. APPROVAL

It shall be unlawful for any persons, firms, corporations, companies, institutions, municipalities or communities to install, extend or alter any air pollution prevention facility and its related appurtenance for use in the County without first having received written approval of the plans, specifications and other related material from the Pollution Control Officer. (§ 9).

VI. VIOLATIONS; NOTICE

Whenever evidence has been obtained or received establishing that a violation of this act or any rules or regulations adopted pursuant to this act has been committed, the Pollution Control Officer shall issue a notice to correct the violation or a citation to cease the violation. If the violation is not corrected within the time so specified or the violation stopped, or reasonable steps taken to rectify the violation, the Pollution Control Officer, with the approval of the Board, shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility or may institute action to compel compliance with the provisions of such notice or citation, or initiate proceedings to prosecute the violator for violation of this act. (§ 11).

VII. EMERGENCY

In the event a violation of this act or the rules and regulations promulgated pursuant to this act creates an immediate health hazard or threatens immediate serious damage to public health, or property, the Pollution Control Officer shall have the power and authority to order immediate cessation of the operations causing such conditions (§ 12).

VIII. APPEALS

Any person aggrieved by any action or decision of the Pollution Control Officer may appeal to the board. The board shall hear and consider all facts material to the appeal, and render a decision promptly. Any person aggrieved by any decision of the board on an appeal shall be entitled to apply to the circuit court of the county for appropriate relief. (§ 13).

12. Manatee County 1/

I. DEFINITIONS

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant, or animal life or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or conduct of business. (§ 4(2)).

"Air contaminants" shall mean a particulate matter including, but not limited to, smoke, charred paper, dust, soot, grime, carbon, or any other particulate matter, or irritating, malodorous or noxious acids, fumes, or gases, or any combination thereof, but shall not include uncombined water vapor. (§ 4(3)).

II. POLLUTION CONTROL BOARD

The Air and Water Pollution Control Board shall consist of nine members, to be residents and registered freeholders of Manatee County. The County Health Director and the County Attorney shall serve as advisers to the Board. (§ 8).

III. POLLUTION CONTROL CODE

The Board of County Commissioners may adopt a code for air and water pollution control, which code is authorized to set reasonable standards regulating the emission and/or discharge of air and water contaminants. The code may require any person, firm, or corporation to have a permit prior to the construction, reconstruction, or alteration or repair of plants, processes, equipment, or devices, which may cause or create air or water pollution. (§ 5).

IV. POLLUTION CONTROL ENGINEER

The Board of County Commissioners shall employ a pollution control engineer who shall have, among others, the following powers and duties:

- (1) To enforce the provisions, rules, and regulations of this act;
- (2) To investigate complaints;

1/ Citations refer to House Bill No. 774, Law Without Approval June 15, 1967.

- (3) To make inspections of property, facilities, equipment and processes operating under the provisions of this act;
- (4) To render every possible assistance and technical advice to persons operating equipment, facilities, and processes, the use of which may cause air or water pollution; and
- (5) To establish, operate, and maintain a continuing program for monitoring air and water quality surveillance networks. (§ 6 and 7).

V. JUDICIAL REVIEW

Any person, firm, or corporation aggrieved by any decision of the Board of County Commissioners on any appeal or application for a variance may present to a court of record a petition setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 60 days after the decision appealed from. (§ 9).

VI. AREA EMBRACED BY PROVISIONS

All territory within Manatee County which is outside the corporate limits of any municipality, and all municipalities in which there is an affirmative vote in the referendum the Act provides for. (§ 14).

13. Hillsborough County 1/

I. GENERAL STATEMENT

The legislature finds and declares that the reasonable control and regulation of activities which are causing or may be reasonably expected to cause pollution or contamination of air may be necessary for the protection and preservation of the public health, safety and welfare. It is the intent and purpose of this act to designate the Board of County Commissioners as the Air and Water Pollution Control Commission of Hillsborough County to provide and maintain for the citizens and visitors of said county, standards which will insure atmospheric purity and freedom of the air from contaminants or synergistic agents injurious to human, plant or animal life or property, which unreasonably interfere with the comfortable enjoyment of life or property or the conduct of business. (§ 2).

II. DEFINITIONS

- (1) "Air contaminants" shall mean a particulate matter, gas, or odor, including but not limited to, smoke, charred paper, dust, soot, grime, carbon or any other particulate matter, or irritating, malodorous or noxious acids, fumes or gases, or any combination thereof, but shall not include uncombined water vapor.
- (2) "Air pollution" shall be construed to mean the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business.
- (3) "Person" shall be construed to include any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally. (§ 3(2)(3) and (16)).

1/ Citations refer to House Bill No. 2127, Law Without Approval August 4, 1967.

III. ADMINISTRATIVE ORGANIZATION

The Air and Water Pollution Control Commission of Hillsborough County shall consist of the duly elected members of the Hillsborough County Board of County Commissioners. (§ 4).

IV. POWERS AND DUTIES

- (1) To adopt, revise and amend from time to time appropriate rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act and to provide for the effective and continuing control and regulation of air pollution in the County. No rules or regulations shall be adopted or become effective until after a public hearing has been held by the Commission.
- (2) To make continuing studies and periodic reports and recommendations for the improvement of air pollution control in the County, and to work in cooperation with the Florida State Board of Health and other appropriate agencies and groups interested in the field of air pollution.
- (3) To investigate air pollution control programs and activities in operation in other areas and to make recommendations for the improvement of the regulation, administration and enforcement of pollution controls in the County; to publicize the importance of adequate pollution controls, to hold public hearings, discussions, forums and institutes, and arrange programs for the presentation of information by experts in the field of air pollution, and to visit and study pollution control programs conducted in other areas. (§ 5).
- (4) Adopt rules and regulations making it unlawful for any person to construct, alter, expand or operate any installation or plant which, through its operation or maintenance, may emit, discharge or permit to escape pollutants or contaminants into the air, without first obtaining a permit as provided by such rules and regulations. (§ 11).

V. HEARING PANEL; DUTIES AND POWERS

A hearing panel shall be appointed by the Commission and shall consist of three persons who are qualified by education and experience to discharge the duties imposed by this act, one of whom shall be a member of the Florida Bar. Said members shall be appointed for three year staggered terms. The hearing panel shall hear and determine all disputes concerning the right to, or denial of, permits; and other questions which may be raised concerning the compliance with rules and regulations; and the hearing panel shall hear and determine any matters which the Commission may delegate to said panel. All hearings shall be public. Rulings shall be by majority vote and a written decision containing findings of fact and conclusions of law shall be rendered in each case. Appeal from the decisions of the hearing panel shall be to the circuit court of Hillsborough County. (§ 6).

VI. POLLUTION CONTROL DIRECTOR

The Director of the Hillsborough County Health Department shall appoint a pollution control director who shall be employed on the staff of the county health department. (§ 7).

The duties, functions, powers and responsibilities of the pollution control director shall include the following:

- (1) Serve as technical secretary to the Commission, to handle correspondence, investigations and prepare reports and data between meetings.
- (2) The enforcement of the provisions of this act and the rules and regulations.
- (3) Investigation of complaints, study and observation of air pollution conditions, and recommendations as to institution of actions necessary to abate nuisances caused by air pollution, as to prosecution of proceedings for violations of this act.
- (4) Making of inspections of property, facilities, equipment and processes operating under the provisions of this act to determine whether the provisions of this act are being complied with, and making of recommendations for methods by which air pollution may be reduced or eliminated.

- (5) Establishing, operating and maintaining a continuous program for monitoring air pollution by means of County-wide air quality surveillance networks designed to provide accurate data and information as to whether the requirements of this act are being complied with and whether the level of air pollution is increasing or decreasing throughout the County. (§ 8).

VII. APPEALS

Any person aggrieved by an action or decision of the pollution control director may appeal to the hearing panel by filing a notice of appeal. The hearing panel may affirm, reverse or modify the action or decision appealed from. The decision of the hearing panel shall constitute final administrative review. Any person aggrieved by any decision of the hearing panel on an appeal shall be entitled to appeal to the circuit court for appropriate relief. (§ 9).

VIII. REGISTRATION OF SOURCES; SAMPLING AND TESTING

Any person engaging in any activity or operation which may be a source of air pollution shall at the written request of the pollution control director file with the Commission certified reports which reflect the normal operation of the plant or facility; information relating to the processes and information relating to the processes and methods of manufacture; the composition and source of airborne effluents; rate and period of emissions; and such other information as the Commission may prescribe. (§ 10).

A person responsible for the emission of air contaminants from any source shall, upon request of the pollution control director, provide in connection with such sources and related source operations, such sampling and testing facilities exclusive of instruments and sensing devices as may be necessary for the proper determination of the nature, extent, quantity and degree of air contaminants which are, or may be, emitted as a result of such operation. The pollution control director may also require the person responsible for the source of contaminants to conduct tests which will show the contaminant emissions from the source and to provide the results of said tests to the pollution control director. (§ 12).

IX. OPEN BURNING

No person shall ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open burning except:

- (1) Fires used only for noncommercial cooking of food for human beings or for recreational purposes.
- (2) Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, including the disposal of dangerous materials where there is no safe alternate method of disposal, or in the instruction of public employees in the methods of fighting fires.
- (3) Fires intended for the reduction of leaves.
- (4) Fires intended for the cultivation or protection of agricultural crops or citrus.
- (5) Fires intended for the reduction on premises and by the occupation thereof, of domestic rubbish originating solely within any building or structure used primarily for dwelling purposes and containing three or less dwelling units. (§ 13).

X. PROHIBITIONS

It is prohibited and shall be unlawful for any person to cause, let, permit, suffer, or allow to be discharged into the atmosphere from any single source of emission whatsoever any air contaminant which exceeds the limits of time, total quantities and concentrations as herein defined and as may be further defined in the rules and regulations of the Commission. (§ 14(2)).

XI. VIOLATIONS; NOTICE; CITATIONS

Whenever evidence has been obtained or received establishing that a violation of this act or any rules or regulations adopted pursuant to this act has been committed, the pollution control director shall issue a notice to correct the violation or a citation to cease the violation. Such notice or citation shall briefly set forth the general nature of the violation and specify a reasonable time within which the violation shall be rectified or stopped. If the violation is not corrected within the time so specified, or the violation stopped, or reasonable steps taken to rectify the violation, the pollution control director shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility causing the violation until the violation has been corrected, or the pollution control director may institute action to compel compliance with the provisions of such notice or citation, and/or initiate proceedings to prosecute the violator for violation of this act. (§ 15).

XII. EMERGENCY ORDER; PENALTIES

In the event a violation of this act or the rules and regulations promulgated pursuant to this act creates an immediate health hazard or threatens immediate serious damage to the public health, or threatens or causes irreparable injury or damage to property, the pollution control director shall have the power and authority to order immediate cessation of the operations causing such conditions. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. (§ 16).

XIII. PENALTIES

Any person who is convicted of willfully failing or refusing to comply with an order of the Commission shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. Each day during which the willful failure or refusal to comply with such order continues shall constitute a separate offense. (§ 18).

XIV. INJUNCTION

In addition to the remedies provided in this act and notwithstanding the existence of any adequate remedy at law, the pollution control director is authorized to make application for injunction to a circuit judge, and such judge shall have the jurisdiction upon a hearing and for cause shown to grant a permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or from failing or refusing to comply with the requirements of this chapter. (§ 19).

XV. EFFECTIVE DATE

October 1, 1967.

Law Without Approval, August 4, 1967.

14. Orange County 1/

I. GENERAL STATEMENT

The legislature finds and declares that the reasonable control and regulation of activities which are causing or may cause pollution or contamination of air, may be necessary for the protection and preservation of the public health, safety and general welfare. It is the intent and purpose of this act to authorize the Board of County Commissioners of Orange County to provide and maintain for the citizens and visitors of said county standards which insure atmospheric purity and freedom of the air from contaminants injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business. (§ 2).

II. DEFINITIONS

- (1) "Air contaminants" shall mean a particulate matter as defined herein, gas or odor, including but not limited to, smoke, charred paper, dust, soot, grime, carbon or any other particulate matter, or irritating, malodorous or noxious acids, fumes or gases, or any combination thereof, but shall not include uncombined water vapor.
- (2) "Air pollution" shall be construed to mean the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business. (§ 3).

III. ADMINISTRATIVE ORGANIZATION

The Board of County Commissioners of Orange County is authorized and empowered to create and establish the Orange County Pollution Control Board to consist of five members appointed by the Board of County Commissioners. (§ 4 and 5).

1/ Citations refer to House Bill No. 2854, Law Without Approval, July 1, 1967.

IV. POWERS AND DUTIES

The Board shall have the following duties, functions, powers and responsibilities:

- (1) The Board shall elect a Chairman and such other officers as may be deemed necessary or desirable, to serve at the will of the Board. A majority vote of the entire membership of the Board shall be necessary to take any action. Three members of the Board shall constitute a quorum. Members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their official duties. The Chairman may call meetings of the Board.
- (2) To adopt, revise and amend from time to time appropriate rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act and to provide for the effective and continuing control and regulation of air pollution in the County within the framework of this act. No such rules and regulations shall be adopted or become effective until after a public hearing has been held by the Board, and until the rules and regulations adopted by the Board have been approved by the Board of County Commissioners.
- (3) To make continuing studies and research and periodic reports and recommendations for the improvement of air pollution controls in the County, and to work in cooperation with all other State and Federal agencies and other appropriate agencies and groups interested in the field of air pollution.
- (4) To investigate air pollution control programs and activities in operation in other areas and to make recommendations for the improvement of the regulation, administration and enforcement of pollution controls in the County; to publicize and educate the public as to the importance of adequate pollution controls; to hold public hearings, discussions, forums and institutes, and arrange programs for the presentation of information by experts in the field of air pollution; and to visit and study pollution control programs conducted in other metropolitan areas.

- (5) To perform such other duties, functions and responsibilities as may be assigned to the Board from time to time by the Board of County Commissioners.
- (6) To establish ambient air and water quality standards for the County as a whole or any part thereof.
- (7) To establish research projects with other government agencies to determine methods of improving pollution removal by the air pollution prevention facilities.
- (8) To enter into contracts or agreements with the United States or any agency or instrumentality thereof, or with any other county, municipality, district, authority or political subdivision, private corporation, partnership, association or individual to effect the purposes of this act, to make studies, investigations, inspections, surveys and tests, in Orange County and in neighboring counties, provided permission is granted by the Board of County Commissioners of said neighboring county; to receive and accept from the United States, or any agency or instrumentality thereof, or any other public body, grants or loans necessary to effect the purposes of this act; and to receive and accept aid or contributions or loans from any other source of either money, property, labor or other things of value.
- (9) To adopt, modify, and repeal rules and regulations in accordance with the provisions of the Administrative Adjudication Procedure Act, and when so promulgated, said rules and regulations shall have the full force and effect of law. (§ 6).

VI. POLLUTION CONTROL OFFICER

The Board shall employ a pollution control officer subject to the approval of the Board of County Commissioners. (§ 7).

The duties, functions, powers and responsibilities of the pollution control officer shall include the following:

- (1) The enforcement of the provisions of this act and the rules and regulations adopted by the Board.
- (2) To investigate complaints, to make studies and observations of air pollution conditions, to make recommendations as to institution of actions necessary to abate nuisances caused by air pollution, and to institute proceedings for the prosecution of violators of this act.
- (3) Entrance upon and making of inspections of property, except a private residence, facilities, equipment and processes operating under the provisions of this act to determine whether the provisions of this act are being complied with, and making of recommendations for methods by which air pollution may be reduced or eliminated. Any information relating to secret processes, methods of manufacture or production which may be required, ascertained or discovered by inspection or investigation, shall be deemed privileged, and shall not be construed to prevent the use of such records in judicial proceedings in connections with the prosecution of violations of this act, when ordered produced by appropriate subpoena or order of court.
- (4) Establishing, operating and maintaining a continuous program for monitoring air pollution by means of County-wide air quality surveillance networks designed to provide accurate data and information as to whether the requirements of this act are being complied with and whether the level of air pollution is increasing or decreasing throughout the County. (§ 8).

VII. APPROVAL

It shall be unlawful for any persons, firms, corporations, companies, institutions, municipalities or communities to install, extend or alter any air pollution prevention facility and its related appurtenance for use in the County without first having received written approval of the plans, specifications and other related material from the pollution control officer subject to the approval of the Board of County Commissioners. The Board shall adopt the

minimum standards to be required for approval by the pollution control officer. These standards shall be equal to or more stringent than existing statutory rules and regulations as set forth by other federal, state or Orange County agencies. The approval by pollution control officer is not to be construed as superseding other state or Orange County approvals which by law are now or will in the future be necessary prior to construction of any new or altered air or water pollution control device. (§ 9).

VIII. OPERATING RECORDS

Each person, firm, corporation, company, institution, municipality, community and all other interests owning or operating an air pollution control prevention facility shall submit operating reports with frequency and contents as may be required by the rules and regulations set forth by the Board. The requirement by the Board is not to be construed as superseding other state or Orange County regulations regarding submission of operating reports by the owner of a pollution prevention facility. (§ 10).

IX. VIOLATIONS; NOTICE; CITATIONS

Whenever evidence has been obtained or received establishing that a violation of this act or any rules or regulations adopted pursuant to this act has been committed, the pollution control officer shall issue a notice to correct the violation or a citation to cease the violation. Such notice of citation shall briefly set forth the general nature of the violation and specify a reasonable time within which the violation shall be rectified or stopped. If the violation is not corrected within the time so specified or the violation stopped, or reasonable steps taken to rectify the violation, the pollution control officer, with the approval of the Board of County Commissioners, shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility causing the violation until the violation has been corrected, or the pollution control officer, with the approval of the said Board, may institute action to compel compliance with the provisions of such notice or citation, or initiate proceedings to prosecute the violator for violation of this act. (§ 11).

X. EMERGENCY ORDER; PENALTIES

In the event a violation of this act or the rules and regulations promulgated pursuant to this act creates an immediate health hazard or threatens immediate serious damage to the public health, or threatens or causes irreparable injury or damage to property, the pollution control officer shall have the power and authority to order immediate cessation of the operations causing such conditions. Any person receiving such an emergency order for cessation of operations shall immediately comply with the requirements thereof. It shall be unlawful for any person to fail or refuse to comply with an emergency order issued and served under the provisions of this section. Any person who is convicted of willfully failing or refusing to comply with such an emergency order, shall be deemed guilty of a misdemeanor and shall be punished in accordance with law. Each day during which the willful failure or refusal to comply with such emergency order continues shall constitute a separate offense. (§ 12).

XI. APPEALS

Any person aggrieved by any action or decision of the pollution control officer may appeal to the Board by filing notice of appeal. The Board shall hear and consider all facts material to the appeal, and render a decision promptly. The Board may affirm, reverse or modify the action or decision appealed from. The decision of the Board shall constitute final administrative review and no rehearing or reconsideration shall be considered. Any person aggrieved by any decision of the Board on an appeal shall be entitled to apply to the circuit court of the county for appropriate relief. (§ 13).

XII. PROHIBITIONS

It is prohibited and shall be unlawful for any person to cause, let, permit, suffer or allow to be discharged into the atmosphere from any single source of emission whatsoever any air contaminant which exceeds the limits for time, total quantities and ground level concentrations as may be established by the Board in this act. (§ 14).

15. City of Palatka 1/

The City Commission of the City of Palatka is hereby authorized to adopt ordinances controlling, and regulating the pollution of air within the corporate limits of the City, whether on private property, in public places, by industrial waste disposal or sewage disposal or in any place or manner whatsoever, provided, however, that such ordinances or regulations shall not be in conflict with or the standards so adopted shall not be less stringent than those established by the Florida State Board of Health. (§ 1).

This act shall take effect only upon approval of majority of the registered electors voting at the next general election. (§ 2).

1/ Citations refer to House Bill No. 2379, Law Without Approval August 4, 1967.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Georgia 1/

1. Air Pollution Control

I. POLICY STATEMENT

Declares it to be the public policy of the State to preserve, protect and improve the air quality of the State so as to safeguard the public health, safety and welfare of the people consistent with providing for maximum employment and the full industrial development of the State. (§ 88-901).

II. DEFINITIONS

"Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof produced by processes other than natural (§ 88-902(a)).

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities or characteristic /sic/, and of a duration which are injurious or which unreasonably interfere with enjoyment of life or use of property throughout the State or area affected thereby (§ 88-902(b)).

"Source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes (§ 88-902(c)).

"Air-cleaning device" means any method, process or equipment which removes, reduces, dilutes, or renders less noxious air contaminants discharged into the atmosphere (§ 88-902(d)).

"Person" means the State or any agency or institution thereof, any municipality, political subdivision, corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, subdivision, or corporation (§ 88-902(g)).

1/ Citations refer to Sections in Georgia Code Chapter 88-9.

III. POWERS AND DUTIES OF THE BOARD OF HEALTH

- (1) To adopt, modify, repeal and promulgate after due notice and public hearings, rules and regulations; (§ 88-903(a)),
- (2) Establish air quality standards under such reasonable conditions as the Board may prescribe for the prevention, control and abatement of pollution of the air of Georgia; (§ 88-903(a)(1)),
- (3) Require the registration of persons engaged in operations which may result in air pollution and the filing of reports on emissions and physical outlets. The reports are to be either filed consensually or after direction of the Department of Public Health upon notice of hearing; (§ 88-903(a)(2)),
- (4) To exercise general supervision of the administration and enforcement of this act and all rules and regulations and orders promulgated thereunder. (§ 88-903(b)).

IV. POWERS AND DUTIES OF DEPARTMENT OF PUBLIC HEALTH

- (1) To administer and enforce this Act and all rules and regulations and orders promulgated thereunder;
- (2) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution;
- (3) To advise, consult and cooperate with other agencies of the State, the Federal Government, other States and interstate agencies, and with affected groups, political subdivisions, and industries;
- (4) To accept and administer loans and grants from the Federal Government and from other sources;
- (5) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air pollution and the causes, prevention, control and abatement deemed necessary and advisable;
- (6) To collect and disseminate information relating to air pollution and the prevention, control and abatement thereof;
- (7) To issue, modify, or revoke orders;
- (8) To hold hearings, issue notices and subpoenas, administer oaths, and take testimony;

- (9) To require such maintenance and operation of abatement systems as is required to comply with established orders, standards, rules and/or regulations; and
- (10) To exercise all residual powers necessary to carry out the purposes of this Act. (§ 88-904).

V. POWERS AND DUTIES OF COUNTY BOARDS OF HEALTH

The county boards of health are empowered to conduct studies and research to determine factors responsible for air pollution; to determine physiological effects of air pollutants on health and safety, and to render advice and make recommendations. (§ 88-905),

VI. INSPECTIONS AND INVESTIGATIONS

The Department of Public Health or its duly authorized representative is empowered to enter any property for the purpose of inspection and investigating conditions relating to pollution or possible pollution (§ 88-907).

VII. CONFIDENTIALITY OF INFORMATION

Any information relating to secret processes, devices, or methods of manufacture or production obtained by the Board, Department or their employees shall be kept confidential. (§ 88-908)

VIII. EMISSION STANDARDS

The Board may establish such emission limits as are necessary to prevent air pollution (§ 88-911).

IX. VARIANCES

The Department may grant specific or general classes of variances from the particular requirements of any rule, regulation or general order. The variances shall be limited in time (§ 88-912).

X. PROCEEDINGS

Whenever the Department has reason to believe that a violation has occurred, it shall attempt to remedy the same by conference, conciliation and persuasion. In case of failure of such remedy the Department may cause a written complaint to be served on the alleged violator or violators ordering corrective action. Upon finding that an emergency exists requiring immediate action to protect health or welfare, the Department, with concurrence of the Governor, may issue an order requiring necessary action to be taken. An alleged violator may request a hearing before the Department (§ 88-913).

Georgia -- Continued

XI. JUDICIAL REVIEW

Any person aggrieved or adversely affected by any final order or action of the Board or Department shall have the right of judicial review thereof by an appeal. (§ 88-915)

XII. PENALTIES

Any person who violates any provisions of or who fails to perform any duty imposed hereunder, or regulation, or who violates any order or determination of the Department shall be guilty of a misdemeanor and shall be punished as for a misdemeanor. (§ 88-916)

XIII. EFFECTIVE DATE

April 14, 1967.

2. Tax Exemption

The sale of machinery and equipment incorporated into any facility and used for the primary purpose of reducing or eliminating air pollution is exempt from the Sales and Use Tax if the purchaser furnishes the seller a certificate of exemption issued by the Commissioner of Revenue. (Act 173, Laws 1967, effective April 1, 1967).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Guam 1/

The Division of Public Health and Sanitation of the Department of Public Health and Welfare under the Director of Public Health and Welfare is responsible for inspecting public and private buildings, vehicles, aircraft, ships, and other places, except homes, at reasonable hours (§§ 9500.05). The Director may order immediate abatement of a public nuisance, which is defined as "anything which is dangerous to life, injurious to health, or renders . . . air . . . impure or unwholesome." (§§ 9500.5, .50 (e)).

Maintaining or committing a public nuisance on public or private property or omitting to perform a legal duty to remove one is punishable by up to six months in jail or a fine of \$500 or both, as is maintaining or permitting a public nuisance to exist on owned property or, upon ten days written notice to abate, upon leased or occupied property (§§ 9500.6, .7, .14). After ten days written notice to abate to an owner, the Director may order abatement and levy the cost thereof in the form of a lien against the property on which the nuisance was maintained and a personal obligation against the property owner, and such abatement is performed by the Director of Public Works under the protection of the Director of Public Safety (§§ 9500.8, .9). Complaints alleging public nuisance are investigated and violators may be arrested (§§ 9500.11, .12).

The destroying or attempting to destroy by burning of garbage, dead animals, or other offensive substances the burning of which may give off foul and noisome odors in or within one-quarter mile of Agana, any village, or any other urban area, except in an approved type of incinerator or as otherwise authorized, is prohibited (§ 9660.7).

1/ Citations refer to sections in The Government Code of the Territory of Guam, 1961 Revision and 1964 Cumulative Pocket Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Hawaii 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

The "Air Pollution Control Act" establishes a State-wide program of air pollution control under the Department of Health. The Department is authorized to designate specific areas for air pollution control measures and to organize county advisory air pollution control associations. Such associations are to advise the Department of county air pollution problems and to discuss and report to the Department on proposed regulations of local application which the Department proposes to adopt. (§ 47-63; 47-67).

"Air pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as shall be affected thereby." Hazards incident to the employer-employee relationship are excluded. "Substances" include smoke, fumes, odors, gases, solids, particulate matter, etc., or any combination. (§ 47-61).

II. ADMINISTRATIVE ORGANIZATION

A. Enforcement Agency

The Department of Health is directed to "control" air pollution in accordance with rules and regulations promulgated by it (§ 6) ("control" is defined as including prohibition (§ 3)). Such rules and regulations may designate specific areas for the control of air pollution (§ 47-64; 47-61; 47-63).

B. Duties and Powers

(1) Administrative

The Department is authorized to:

- a. Establish an air pollution control section, hire employees and assign duties; (§ 47-64(a))

1/ Citations refer to Title 47, 1963 Supplement to Revised Laws of Hawaii.

- b. Conduct and supervise research programs on causes, effects and hazards of air pollution; (§ 47-64(b))
- c. Conduct and supervise program of air pollution control education and prepare and distribute information on the subject; (§ 47-64(c)),
- d. Appoint masters to conduct hearings and investigations under § 7-27 R.L. Hawaii 1955; (§ 47-64(g)),
- e. With the approval of the governor, cooperate with and receive money from the Federal government, or any political subdivision of the State, or from private sources for the study and control of air pollution; (§ 47-64(h)),
- f. Organize county advisory air pollution control associations as it may determine. Members serve without compensation at the pleasure of the Board and are entitled to necessary expenses incurred. A Board employee acts as secretary. (§ 47-67(a)).

(2) Enforcement

- a. Permits - The Department is authorized to require all persons and governmental agencies engaged or desiring to engage in operations which may result in air pollution to secure a permit prior to installation, or operation, or continued operation after the effective date of the act. The permit will be granted only if operations comply with regulations. The Department may require the filing of plans and reports by such persons, dealing with the installation and its operation. (§ 47-64(d)).
- b. Inspection - The Department has the authority to enter and inspect, during reasonable hours, any building or place (except a building designed and used exclusively as a private residence) for the purpose of determining compliance with regulations and to make reasonable tests. Confidential information obtained by employees within the scope of employment shall be disclosed only in connection with official duties as it relates to air pollution. Any disclosure not authorized by the act is a misdemeanor punishable by fine up to \$1000. The employee is also liable in damages to any person injured by the disclosure. (§ 47-64(e); 47-66).

Hawaii -- Continued

- c. Adoption of regulations - All regulations of strictly local application must be submitted to the appropriate county air pollution association (if there is one) for discussion and report. (§ 47-67(c)),
- d. Fees - A fee schedule may be established by the Department to cover the cost of issuing permits and making the necessary inspections, which fees shall be paid by all applicants. The fees are appropriated to the Board for the expenses of the program. (§ 47-65).

III. PROCEDURES

A. Investigation of Violations

Upon written complaint, or when the Department has cause to believe there is a violation, an investigation shall be made. If the Department finds a violation exists, the Department shall endeavor to correct it by conference, conciliation and persuasion (§ 47-68).

B. Hearing

- (1) If voluntary correction cannot be obtained within a reasonable time, a written notice of hearing before the Department, or a master or masters, together with a copy of the complaint, is to be served. (§ 47-60(a)).
- (2) The respondent may file a written answer and may appear at the hearing, with or without counsel and submit testimony. The testimony shall be under oath and stenographically recorded, and the parties are not bound by technical rules of evidence. (§ 47-69(b)).
- (3) Trade secrets are not to be disclosed in public hearing before the Department so far as practicable and shall be kept confidential. At the request of respondent the Department shall subpoena witnesses and require the production of records. (§ 47-69(c)).

C. Orders and Their Enforcement

(1) Issuance

After the hearing, if the Department determines the respondent is in violation, it enters an order accordingly and sets a reasonable time for taking required

corrective measures and requires periodic progress reports. Secret processes, etc., revealed by such reports are to be kept confidential. (§ 47-70).

(2) Injunctive relief

If the order is not complied with, the Department may seek injunctive relief in any court of competent jurisdiction. (§ 47-71).

(3) Judicial Review

Any person aggrieved by the decision of the Department may appeal to a circuit judge within twenty days after the decision is rendered, and obtain a de novo hearing. A notice of appeal is filed with the Department, which must forward the notice, together with a certified copy of the hearing, to the clerk of the circuit court to which the appeal is to be taken, (§ 47-73).

IV. PENALTIES

- A. If corrective action is not taken within nine days of the time set in the order of the Department, any private person or agency shall be liable to a penalty of \$100 for each seven-day period or fraction thereof that the violation continues beyond such ninth day. The Department may institute legal proceedings in the name of the State to recover the penalty (§ 47-72).
- B. Any person who interferes with or obstructs an employee conducting an inspection is guilty of a misdemeanor and subject to a fine of not more than \$500 (§ 47-79).

V. MISCELLANEOUS

- A. Technical defects shall not invalidate any rule or regulation of the Department, and they shall not be subject to judicial review or their enforcement restrained except in connection with an appeal under § 47-73. (§ 47-73; 47-74).
- B. When an appeal is taken, any action for enforcement or prosecution for violation may be stayed by the judge having jurisdiction until the determination of the appeal. (§ 47-74).

Hawaii -- Continued

- C. Officers or employees shall not be criminally liable for actions in the performance of their duties. (§ 47-75).
- D. County ordinances and regulations not inconsistent with this act or regulations thereunder shall continue in effect. Counties may adopt regulations and ordinances not inconsistent with this act controlling air pollution throughout the county or in affected areas and establishing county control agencies. Counties may contract with each other and with State for sharing of services and for technical assistance and training. Inconsistent county ordinances and regulations declared invalid. (§ 47-77).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Idaho 1/

I. DEFINITIONS

"Air pollution" means the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with human, plant or animal life, or the reasonable use of property. There is excluded herefrom all aspects of employer-employee relationships as to health and safety hazards. (§ 2).

II. ADMINISTRATIVE ORGANIZATION

Creates in the State Board of Health an Idaho Air Pollution Control Commission, which shall be an administrative department of the State Government. The Commission shall consist of five members, appointed by the Governor and serving at his pleasure. (§ 3). Members of the Air Pollution Control Commission serve without compensation. (§ 5).

III. POWERS AND DUTIES OF THE COMMISSION

- (1) To control and regulate its internal affairs;
- (2) To conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution;
- (3) To conduct and supervise Statewide programs of air pollution control education;
- (4) To cooperate with and receive money from the Federal Government or any county or municipal government, and with approval of the Governor, from any other source, whether public or private;
- (5) To develop a comprehensive program for the prevention and control of all sources of air pollution;
- (6) To advise, consult and cooperate with agencies of the United States, the Board of Health and other agencies of the State, political subdivisions and industries and any other affected groups in furtherance of the purposes of this Act;

1/ Citations refer to Chapter 361, Laws 1967

- (7) To formulate, adopt and promulgate, amend and repeal codes and rules and regulations controlling and prohibiting air pollution; provided, however, that no such code, rule or regulation and no amendment or repeal shall be adopted, except after public hearing;
- (8) To initiate and receive complaints as to air pollution;
- (9) To hold hearings and enter orders diminishing or abating the causes of air pollution and the enforcement of its codes, rules or regulations;
- (10) To institute legal proceedings, including suits for injunctions for the enforcement of its orders, codes, rules and regulations and the prevention of air pollution and for the enforcement of penalties (§ 8).

IV. POWERS AND DUTIES OF THE BOARD OF HEALTH

To cooperate with the Commission in conducting and supervising research programs for the purpose of determining the causes and effects and hazards of air pollution; in conducting and supervising Statewide programs of air pollution control education; in requiring the registration of persons engaged in operations which may result in air pollution and the filing of reports by them relating to locations, size and height of outlet, rate and period of emission and composition of effluent, and such other information as the Commission shall prescribe shall be filed relative to air pollution.

After the Commission has made a comprehensive study of air pollution and shall have adopted any codes, rules, or regulations relating to controlling, reducing or prohibiting air pollution, the Board shall police air pollution in accordance therewith, and for that purpose shall have the power to enter and inspect any building or place for the purpose of investigating an actual source of air pollution and ascertaining compliance or noncompliance with any code, rule or regulation of the Commission. (§ 10).

V. HEARINGS

Any hearing required by this Act to be held before the Commission shall be held before any three or more members designated by the chairman and any member shall have power to subpoena witnesses and compel attendance, administer oaths and receive the production of evidence. Any information as to secret processes or methods of manufacture or production shall not be disclosed in public hearings before the Commission, insofar as practicable, and shall be kept confidential. (§ 11).

VI. LOCAL PROGRAMS

The Commission may organize a county air pollution control division in each county. Each division shall consist of members of the county appointed by the Commission. (§ 12).

VII. VIOLATIONS; PROCEDURE; PENALTIES

In case any written complaint is filed with the Board, or the Board believes that any person is violating any code, rule or regulation of the Commission, the Board shall cause a prompt investigation to be made and if it finds, after such investigation, that a violation exists, it shall immediately endeavor to eliminate any source or cause of air pollution resulting from such violation by conference, conciliation and persuasion.

If corrective action is not taken within reasonable time the Board shall file a complaint with the Commission and shall cause to be issued and served a written notice requiring the violator to answer charges of such complaint at a hearing.

Any person determined by the Commission to have violated any provision of any code, rule or regulation of the Commission shall be liable for a penalty of \$500 per week beginning with the 10th day after the expiration of the time fixed for the taking of preventive or corrective measures in the Commission's order. If such preventive or corrective measures are not taken, the Commission may institute a civil action for injunctive relief. (§§ 15, 16, 19).

VIII. JUDICIAL REVIEW

Any person whose interest is substantially affected by the adoption or repeal of any rule or regulation or by any order of the Air Pollution Control Commission has a right to seek review by the district court exercising jurisdiction over the major portion of the area where the property affected lies, or in which the county air pollution control board division affected is located. (§ 20(1)). Proceedings in the district court shall be by trial de novo (§ 20(a)).

IX. SAVINGS PROVISION

Consistent local ordinances and regulations remain effective. (§ 22.)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Illinois 1/

1. Illinois Air Pollution Control Act 2/

I. GENERAL STATEMENT

It is the intent and purpose of this Act to maintain purity of the air resources of the State consistent with the protection of the normal health, general welfare and physical property of the people, maximum employment and the full industrial development of the State. The discharge into the outdoor atmosphere of air contaminants so as to cause air pollution and create a public nuisance is contrary to the public policy of the State of Illinois and in violation of this Act. (§ 240.5; 240.3).

II. DEFINITIONS

- A. "Air contaminant" is particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof" (§ 240.2(a)).
- B. "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property" (§ 240.2(c)).

III. AIR POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

A. Composition and Organization

The nine members of the Board shall be the Director of the Illinois Department of Health, ex officio, and eight unpaid members appointed by the Governor with the advice and consent of the Senate and removable by him. Of the eight appointees, one shall be a professional engineer with at least five years experience in air pollution control; one shall be a physician experienced in industrial medicine; one shall be in

1/ Citations refer to Smith-Hurd Illinois Annotated Statutes.

2/ Citations refer to Smith-Hurd Illinois Annotated Statutes, Chapter 111½.

a field directly related to agriculture or conservation; one shall be a manager of a private manufacturing concern; one shall be engaged in municipal government; one shall be representative of labor; and two others shall be selected at large. The members shall serve overlapping four-year terms.

The Board shall meet as least four times a year, but special meetings may be called by the chairman or any three members. Five members shall constitute a quorum. A chairman and vice-chairman shall be elected annually from the membership, and the Chief Sanitary engineer of the Illinois Department of Public Health shall serve as Technical Secretary to the Board. (§ 240.4).

B. Powers and Duties

(1) Powers

The Board is empowered to:

- a. Prepare and develop a general comprehensive plan for the prevention, abatement or control of air pollution, recognizing varying requirements of different parts of the State. (§ 240.5-1.1).
- b. Adopt and promulgate rules and regulations, including regulation of the installation of new equipment capable of becoming a source of air pollution. (§ 240.5-1.2). Rules and regulations may differ as between different types and conditions of air pollution, as between particular air contamination sources, and as between particular areas of the State. In establishing such differences, the Board shall take into consideration such factors as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that rules proper as to an essentially residential area of the State may not be proper as to a highly developed industrial area. (§ 240.7(b)).

- c. Hold hearings upon complaints or petitions for variance or certificate of exemption, or upon appeals from denial of the Technical Secretary of installation permits, and in connection therewith issue subpoenas requiring the attendance of witnesses and the production of evidence. (§ 240.5-1.3).
- d. Enter such order or determination, including an order to abate, as may be necessary to effectuate the purposes of the Act. In making such order or determination, the Board shall take into account all facts bearing on the reasonableness of the emissions involved including:
 - (d-1) character and degree of injury to health, general welfare and physical property;
 - (d-2) social and economic value of the air pollution source;
 - (d-3) relative suitability of the air pollution source to the area, including the question of priority of location in the area involved; and
 - (d-4) technical practicability and economic reasonableness of controlling the emissions from such source.

The order or determination of the Board may include such advisory recommendations as the Board may deem appropriate. (§ 240.5-1.4)
- e. Cause legal proceedings to be instituted in a court of competent jurisdiction to compel compliance with any order or determination. (§ 240.5-1.5).
- f. Enter at all reasonable times in or upon any private or public property except private residences to investigate and inspect suspected air pollution sources. (§ 240.5-1.6).

- g. Request and receive necessary assistance from other State agencies. (§ 240.5-1.7).
- h. Employ needed consultants and technical assistants. (§ 240.5-1.8).

(2) Duties

The Board shall have the following duties:

- a. To encourage voluntary cooperation by affected persons and groups in obtaining a reasonable degree of air purity in the State. (§ 240.5-2.1).
- b. To encourage authorized air pollution agencies of political subdivisions to handle their respective problems to the greatest extent possible and provide technical assistance to those subdivisions requesting it. (§ 240.5-2.2).
- c. To encourage and conduct studies and research. (§ 240.5-2.3).
- d. To collect and disseminate information. (§ 240.5-2.4).
- e. To represent the State in all arrangements for interstate air pollution compacts. (§ 240.5-2.6).
- f. To provide such technical, scientific or other services as may be required to carry out the provisions of this act. (§ 240.5-2.7).
- g. To cooperate with other interested agencies (including the Federal Government), groups or persons, and to accept and administer all grants or other funds given for the purposes of carrying out any of the functions of this Act. (§ 240.5-2.5; 240.5-2.8).

IV. TECHNICAL SECRETARY

The Technical Secretary:

- A. Or his representative, shall attend all Board meetings but shall not vote. (§ 240.6(a)).

- B. Or his authorized representative, as the Board may require, shall handle correspondence, conduct inspections and investigations, and prepare reports and data during the interim between its meetings. (§ 240.6(b)).
- C. Shall exercise general supervision over all Board employees, and shall investigate complaints, recommend to the Board the issuance of formal complaints and prosecute such complaints before the Board. (§ 240.6(c)).
- D. Shall have power to grant permits for the installation of new equipment capable of becoming a source of air pollution, subject to rules and regulations of the Board defining the classes and types of equipment subject to such permit requirement. Upon his refusal to grant an installation permit, any person requesting such permit shall be entitled to a hearing before the Board. (§ 240.6(d)).

V. PROCEDURES

A. Hearings

- (1) All hearings shall be before at least three members of the Board. (§ 240.10(c)).
- (2) Any member of the Board may issue notices of hearings requesting the attendance and testimony of witnesses and the production of relevant evidence, and may examine such witnesses. (§ 240.6(b)).
- (3) At public hearing, all testimony shall be under oath and recorded stenographically. A copy of the transcript shall be made available to any person upon payment of the usual charges. (§ 240.6(a)).
- (4) No information relating to secret processes or methods of manufacture shall be disclosed at any hearing and all such information shall be kept confidential. (§ 240.6(d)).

B. Rules and Regulations

- (1) Approval in writing of at least six members of the Board shall be necessary for the adoption, amendment or repeal of a rule or regulation.

- (2) Before a rule may be adopted, amended or repealed, there must be a public hearing on thirty days notice within the area of the State concerned. Opportunity to be heard by the Board shall be given any interested person, and any person heard or represented at such hearing shall be informed in writing of the Board's action. Upon request of a member of the Board, opportunity shall be given interested persons to examine any witness testifying.
- (3) No Board action relative to a rule or regulation shall become effective until a certified copy has been filed with the Secretary of State.(§ 240.7(a)).

C. Enforcement

- (1) Upon request of the Board or receipt of information concerning an alleged violation of this Act or any rule or regulation promulgated hereunder, or if he shall deem advisable, the Technical Secretary shall cause investigations to be made. If, in his opinion, such investigations disclose a violation, he shall endeavor to eliminate such violation through conference, conciliation and persuasion,(§ 240.9(a) and (b)).
- (2) If conference, conciliation and persuasion fail and the Technical Secretary files a formal complaint with the Board, the Board may have issued and served a written notice and a copy of the formal complaint which specifies both the provision allegedly violated and the manner and extent of such violation. A person so complained against must answer the charges at a hearing before the Board at least 30 days after the date of the written notice,(§ 240.9(b)).
- (3) The respondent may file a written answer to the complaint and may appear at the hearing in person or by representative, with or without counsel. He may make oral argument, offer testimony or cross-examine opposing witnesses. The Technical Secretary shall subpoena such witnesses as the respondent may reasonably designate and shall require the production of such written evidence as reasonably relates to the matter under investigation,(§ 240.9(c)).

- (4) Upon due consideration of the record or upon respondent's default in appearing, the Board shall issue its determination or final order, upon approval, in writing, by at least five members, and shall immediately notify the respondent thereof by registered mail. (§ 240.9(d)).
- (5) In all proceedings with respect to alleged violations, the burden of proof shall be on the Technical Secretary. (§ 240.9(d)).

D. Variances

- (1) Variances, for periods of up to one year, may be granted by the Board if it is determined that strict compliance with a provision or Board order will result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity, and is without corresponding public benefit. In determining the conditions and extent of variance the Board shall recognize progress made in eliminating air pollution, considering the reasonableness of conditioning the variance upon partial abatement over an established reasonable period or of conditioning it upon other requirements. Any variance may be conditioned upon periodic reports on the progress of compliance. (§ 240.11(a), (b), and (c)).
- (2) A person seeking a variance shall petition the Technical Secretary to that effect. The Secretary shall investigate such petition and recommend action on it to the Board. If the recommendation is favorable, the Board may grant the variance without hearing; if it is not, or if the Board determines that a hearing would be desirable, a hearing similar to that specified in the section on enforcement, above, shall be held, but the burden of proof shall be on the petitioner. (§ 240.11(d)).

VI. FAILURE TO ACT

If the Technical Secretary fails to take action within 60 days after a request for installation permit, petition for variance, or certificate of exemption, or if the Board fails to enter a final order or determination within 60 days after the final argument in an enforcement hearing, the person involved shall be entitled to consider such failure a grant of the requested permit, variance or exemption, or a finding favorable to the respondent in an enforcement hearing (§ 240.12(a)).

VII. PENALTIES

If its final order and determination, not then subject of judicial review, is being violated, the Board may cause the Attorney General to institute a civil action in any court of competent jurisdiction for injunctive relief or for the assessment of a penalty not to exceed \$200 for each day of continued violation, or both, as the court may deem proper, (§ 240.15).

VIII. APPEALS

A. The validity of any rule or regulation may be determined upon petition for declaratory judgment addressed to the Circuit Court of the county in which petitioner resides if such rule or its threatened application impairs or threatens to impair his legal rights or privileges, after the Board has had a reasonable chance to pass upon its validity and application to petitioner. (§ 240.8)

B. All final orders and determinations of the Board hereunder shall also be subject to judicial review pursuant to the provisions of the "Administrative Review Act", as amended, and the rules adopted pursuant thereto. (§ 240.13).

IX. SCOPE AND CONSTRUCTION

A. Exemption

- (1) This Act shall not apply in any political subdivision which provides for the control of air pollution in a manner not inconsistent with the provisions of this Act or rules adopted hereunder. (§ 240.14(a)).
- (2) A certificate of exemption, issued and revocable by the Board, shall attest to such non-application, and shall be available for inspection in the office of the county or municipal clerk, as the case may be. (§ 240.14(a)).
- (3) Any political subdivision desiring a certificate of exemption shall petition the Technical Secretary of the Board, and a procedure identical to that for application for a variance, outlined above, shall be followed in determining the granting or non-granting of such certificate, (§ 240.14(c)).

Illinois -- Continued

B. The Board has no jurisdiction over air pollution existing solely within commercial and industrial plants or to affect employer-employee relations relating to a condition of air pollution, (§ 240.5-3).

C. No existing civil or criminal remedy for a wrongful action which is a violation of any part of this law or any rule or regulation promulgated hereunder shall be impaired by this Act, (§ 240.16).

D. If any part of this Act is judged unconstitutional, such judgment shall not affect the validity of the Act as a whole or of any other part thereof. (§ 19, S. B. No. 732, app. 8-19-63).

X. NORTHEASTERN ILLINOIS METROPOLITAN AREA AIR POLLUTION CONTROL BOARD

A. "An Act creating the N.I.M.A.A.P.C.B., and prescribing its powers and duties," approved August 25, 1961, is repealed (§ S.B. No. 732 app. 8-19-63).

B. All materials, records and other resources and equipment of the N.I.M.A.A.P.C.B. shall be transferred to the Board as of the effective date of this Act.(§ 240.17).

XI. EFFECTIVE DATE

Effective upon approval, August 19, 1963.

2. State Laboratories

The Department of Public Health has power to maintain physical, chemical, bacteriological and biological laboratories to make examinations of atmosphere and equipment and processes relating thereto and to make such diagnostic tests for the evaluation of health hazards necessary for the protection of the people of the State, (Ch. 127, § 55(6)).

3. Local Programs

A. Cities 1/

For the purpose of lessening or preventing the discharge of air contaminants, the corporate authorities of a city, village or incorporated town may prescribe by ordinance for the regulation of:

- (1) The design and installation of equipment of buildings and uses of land connected with air contamination,
- (2) The operation or use of equipment and appliances emitting air contaminants,
- (3) The conduct of uses of land causing emission of air contaminants and
- (4) The abatement of an operation, activity or use causing air contamination.

"Air contaminant" as defined "means and includes but is not limited to the following: dust, soot, mist, smoke fumes, fly ash, vapor, corrosive gas or other discharge, and any other air borne material or substance that is offensive, nauseous, irritating or noxious to humans or other animal life" (§ 11-19.1-11 of Illinois Municipal Code as added by H. B. 348, approved August 25, 1961).

The corporate authorities of any city, village or incorporated town may make contracts providing for a program of joint air contamination control within the jurisdiction of the contracting parties and providing terms and conditions that are not in conflict with this Section with the corporate authorities of any one or more of the following:

- a. any other city, village or incorporate town;
- b. one or more counties; or
- c. adjoining areas of another State.

The rules and regulations for air contamination control established pursuant to the terms and conditions of such approved contract shall be adopted by ordinance by each contracting city, village or incorporated town.

1/ House Bill No. 1544, approved July 11, 1967, amending Article 11 of the Illinois Municipal Code.

B. Counties 1/

For the purpose of lessening or preventing the discharge of air contaminants, to prescribe by ordinance for the regulation of:

- (1) The design and installation of accessory or appurtenant parts and equipment of buildings and structures and of uses of land connected with the emission of air contaminants,
- (2) The operation or use of equipment and appliances emitting air contaminants,
- (3) The conduct or carrying on of uses of land which causes the emission of air contaminants, and
- (4) The abatement of an operation, activity or use causing air contamination.

For the purposes of this Section, "air contaminant" means and includes but is not limited to the following: dust, soot, mist, smoke, fumes, fly ash, vapor, corrosive gas or other discharge and any other air borne material or substance that is offensive, nauseous, irritating or noxious to humans or other animal life.

The county board of any county may make contracts providing for a program of joint air contamination control within the jurisdiction of the contracting parties and providing terms and conditions that are not in conflict with this Section with the corporate authorities of any one or more of the following:

- a. any other county or counties;
- b. any one or more cities, villages or incorporated towns; or
- c. adjoining areas of another State.

The rules and regulations for air contamination control established pursuant to the terms and conditions of such approved contract shall be adopted by ordinance by each contracting county.

1/ House Bill No. 1543, Approved July 11, 1967, revising Section 25.14(b) of "An Act to revise the law in relation to counties."

4. Taxation

A. Valuation of Property for Tax Purposes 1/

I. GENERAL STATEMENT

In 1967, the Revenue Act of 1939, Sections 20, 21, and 151, pertaining to the valuation of real and personal property for property taxes, were amended so that pollution control facilities would be valued in relation to the fair cash value of their economic productivity to their owners. (§ 21a-1).

II. DEFINITION

Defines "Pollution Control Facilities" to mean any system, method, construction, device or appliance appurtenant thereto, designed, constructed, installed or operated for the primary purpose of eliminating, preventing, or reducing air pollution, or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property, or any portion of any building or equipment designed, constructed, installed or operated for such primary purpose. This definition shall apply to pollution control facilities designed, constructed, or installed prior to and after the passage of this act. (§ 21a-2).

III. METHOD OF VALUATION FOR POLLUTION CONTROL FACILITIES

For the purpose of assessing the fair cash value of any certified pollution control facilities under the real and personal property tax laws, the Department of Revenue shall take into consideration the actual or probable net earnings attributable to the facilities in question, capitalized on the basis of their productive earning value to their owner; the probable net value which could be realized by their owner if the facilities were removed and sold at a fair, voluntary sale, giving due account to the expense of removal and condition of the particular facilities in question; and such other information as the Department may consider as bearing on the fair cash value of the pollution control facilities in question. (§ 21-a-3).

1/ Citations refer to the Revenue Act of 1939, as amended.

IV. CERTIFICATION PROCEDURE

Pollution control facilities shall be certified as such for tax purposes by the Air Pollution Control Board, and shall be assessed by the Department of Revenue for tax purposes. (§ 21a-4).

Application for a pollution control facility certificate is to be filed with the Air Pollution Control Board, in such manner and form as may be prescribed by regulations issued by the Board, and shall contain appropriate and available descriptive information concerning anything claimed to be entitled in whole or in part to tax treatment as a pollution control facility. If it is found that the claimed facility or relevant portion thereof is a pollution control facility, the Board, acting through its Technical Secretary, shall enter a finding and issue a certificate to that effect. The effective date of a certificate shall be the date of the making of the application for the certificate or the date of the construction of the facility, whichever is later. (§ 21a-5).

V. POWERS AND DUTIES OF THE AIR POLLUTION CONTROL BOARD

Before denying any certificate, the Board shall give reasonable notice in writing to the applicant and shall afford the applicant a reasonable opportunity for a fair hearing. On like notice to the holder and opportunity for hearing, the Board may on its own initiative revoke or modify a pollution control certificate whenever any of the following appears:

- (1) The certificate was obtained by fraud or misrepresentation;
- (2) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities;
- (3) The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose. (§ 21a-6).

VI. JUDICIAL REVIEW

Any applicant or holder aggrieved by an order of the Air Pollution Control Board may appeal pursuant to the Administrative Review Act. (§ 21a-7).

VII. PROCEDURES FOR ASSESSMENT

The Department of Revenue is to promulgate the procedural regulations for assessment proceedings for property certified to be pollution control facilities. (§ 21a-8).

Assessments made of certified pollution control facilities by the Department shall be certified by it to the county clerks of the respective counties in which such certified pollution control facilities are located. The county clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in the taxing districts in which such certified pollution control facilities are located. (§ 151).

B. Exemptions 2/

Pollution control facilities were exempted by 1967 amendments from the taxes levied under the following Acts:

- (1) 'Retailers' Occupation Tax Act" (§ 1a);
- (2) "Use Tax Act" (§ 2a);
- (3) "Service Use Tax Act" (§ 2a); and
- (4) "Service Occupation Tax Act" (§ 2a).

Pollution control facilities are also exempted from the Municipal Retailers' Occupation Tax (§ 8-11-1), the County Retailers' Occupation Tax (§ 25.05-2), the Municipal Service Occupation Tax (§ 8-11-5) and the County Service Occupation Tax (§ 25-05.3).

1/ Citations refer to the individual acts.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Indiana 1/

1. Air Pollution Control Commission

I. GENERAL STATEMENT

A. Summary

The 1961 Air Pollution Control Act established an Air Pollution Control Board as an independent enforcement agency and vested in the State Board of Health the power and authority to conduct studies, investigations and research, render technical assistance, etc. (See Item II B below).

It is declared to be the intent and purpose of the Act to seek to achieve such a reasonable degree of air purity consistent with maximum employment and full industrial development as shall be technically feasible, economically reasonable and necessary for the protection of normal health, the general welfare and the property and people of the State (§ 2). The discharge of air contaminants so as to "cause air pollution and create a public nuisance" is declared to be contrary to the public policy of the State and the provisions of the Act (§ 5).

The declared intention of the Act is that primary responsibility for the control of the emission of air contaminants into the atmosphere shall rest with the responsible local governmental agency (See Item II A below).

B. Definitions

"Air pollution" is defined as the "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life and property" (§ 2(c)).

1/ Citations refer to Ch. 171, Indiana Laws of 1961 (Regular Session), approved March 8, 1961. This Act is codified in Title 35, Chapter 46 of Burnes Indiana Statutes, Annotated, 1965 Cumulative Pocket Part.

"Air contaminant" means "dust, fumes, gas, mist, smoke or vapor, or any combination thereof" (§ 2(d)).

"Air contaminant source" is broadly defined as "any and all sources of emission of air contaminants, whether privately or publicly owned or operated" and includes, among other examples specifically listed, motor vehicles, railroad locomotives, ships and boats (§ 2(e)).

II. ADMINISTRATIVE ORGANIZATION

A. Enforcement Agency--Adjudicatory Functions

(1) Membership

Enforcement is vested in the 7-member Air Pollution Control Board of the State of Indiana (§ 4), which is created as an administrative board (§ 3). The Secretary of the State Board of Health is an ex-officio member. The six other members, appointed by the governor for four-year terms and removable by him for cause, are a licensed physician, a registered graduate engineer, and a representative of agriculture, of industry, of municipal government and of the general public. Provision is made for filling vacancies and for payment of per diem and mileage of the appointed members (§ 3).

(2) Organization and Staff

The board elects a chairman and vice chairman annually at the first meeting in each calendar year, and is required to hold at least two regular meetings a year. A registered sanitary engineer is to be appointed by the Secretary of State Board of Health from his staff to serve as technical secretary of the Board, to handle correspondence, investigations, and prepare reports and data between meetings as the Board may direct. Provision is made for special meetings at call of the chairman or two members (§ 3).

(3) Duties and Powers

The Board is authorized to:

- a. Make investigations, consider complaints, and hold hearings;
- b. Enter necessary orders and require action to abate air pollution, taking into consideration (1) the character and degree of injury to, or interference with, comfort, safety, health, use and enjoyment of property, (2) the social and economic value of the activity, and (3) the scientific and economic practicability of remedial action, and may also make appropriate advisory recommendations;
- c. Adopt rules and regulations consistent with the purpose of the statute (see Item I above); and
- d. Enforce its orders as provided under applicable State law. (§ 4A)

B. Investigative, Research and Cooperative Functions

The State Board of Health is authorized to:

- (1) Advise and consult with public and private groups, other States, and the Federal government in the prevention and control of air contamination sources;
- (2) Conduct studies and research relating to causes, effects, prevention, and control of air pollution;
- (3) Collect and disseminate information;
- (4) Encourage voluntary cooperation by public and private groups in obtaining a reasonable degree of air purity;
- (5) Encourage authorized local air pollution control agencies to handle their own problems, and on request, provide technical assistance to local governments;
- (6) Represent the State in development of interstate air pollution control compacts;
- (7) Accept and administer grants and gifts;
- (8) Enter and inspect at reasonable times all public and private property except private residences;

Indiana -- Continued

- (9) Investigate complaints, make reports as it deems advisable to Control Board, and participate on behalf of the State in Control Board proceedings; and
- (10) Budget and receive appropriations for carrying out the statute. (§ 4B)

III. ENFORCEMENT PROCEDURES

A. Jurisdiction

The Control Board authority is limited to complaints concerning air contaminant sources located in areas where the Board finds after a hearing that no local air pollution law or regulation consistent with the Act is in effect or that the local law or regulation is not being enforced adequately, and in the Board's opinion, is not intended to be so enforced. (§ 5).

B. Hearings

The Control Board may hold a hearing concerning a suspected violation on its motion, or on complaint filed by any person, by a city, county, town or the State Board of Health. The notice and hearing procedures are controlled by the State Administrative Adjudication and Court Review Act. (§ 6).

IV. PENALTIES

It is unlawful to refuse to comply with any rule, regulation or order of the Board, or to interfere with or deny entrance to Board or State Board of Health personnel in their official duties. (§ 7).

V. SCOPE AND CONSTRUCTION

- A. This Act shall not prohibit towns, cities or counties from enacting air pollution control ordinances which do not conflict with the Act and are designed to effectuate its general intent and purpose. (§ 8).
- B. If any part of this Act is for any reason held unconstitutional, such determination shall not affect the validity of the remainder of the Act. (§ 9).

VI. EFFECTIVE DATE

The Act, approved March 3, 1961, became effective on January 1, 1963.

2. Motor Vehicle Air Pollution

Every motor vehicle is required to be equipped with a muffler to prevent "annoying smoke" and the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to "prevent the escape of excessive fumes or smoke" (Chapter 260, Laws of 1961).

3. Tax Exemption of Air Pollution Control Systems

Any tangible personal property not used in the production of property for sale but constituting a stationary facility as part of a privately owned manufacturing or industrial plant and employed exclusively in the operation of an industrial air purification system designed and used for improvement of public health and welfare in the elimination of air contamination caused by industrial wastes and contaminants for which no sanitary treatment or elimination service is provided by public authorities shall be exempt from taxation by the State of Indiana and any political subdivision thereof.

Exemptions shall be claimed on the owner's personal property tax returns, be allowed or denied by the township assessor, subject to review by the County Board of Review and the State Board of Tax Commissioners. (Senate Bill 25, enacted March 6, 1965).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Iowa 1/

I. DEFINITIONS

"Air contaminant" means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, or any combination thereof.

"Air contaminant source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

"Air pollution" means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is injurious to normal human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

"Person" means an individual, partnership, copartnership, cooperative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, or any other legal entity, or their legal representative, agent or assigns. (§ 2).

II. ADMINISTRATIVE ORGANIZATION

Creates and establishes the Iowa Air Pollution Control Commission within the Department of Health, to consist of the Commissioner of Public Health and eight additional members having competence appropriate to service in the field of air pollution, to be appointed by the Governor.

Members appointed to the Commission shall serve for terms of four years, and shall receive no compensation for their services, but shall be reimbursed for travel and other expenses necessarily incurred in the performance of their duties.

The Commission shall hold at least four regular meetings each calendar year. Special meetings may be called by the chairman or by four members of the Commission upon delivery of written notice to the office of each member of the Commission. Five members shall constitute a quorum.

Except as otherwise specified, at least a quorum must be present at any meeting to validate any action and a majority of members present shall determine issues; provided, however, that any rule or regulation or amendment or repeal thereof shall not be deemed operative until it shall have been approved in writing by at least five members of the Commission.

1/ Citations refer to H.B. No. 480, approved June 22, 1967.

The Commission shall select yearly one of its members to serve as chairman, and another of its members to serve as vice-chairman. (Sec. 3)

III. POWERS AND DUTIES

A. Air Pollution Control Commission

1. The Commission, through the Department, shall have general supervision over administration and enforcement of all laws relating to air pollution.
2. To develop and prepare a comprehensive plan or plans for the abatement, control, and prevention of air pollution, recognizing varying requirements for different areas in the state.
3. To adopt, amend and promulgate rules and regulations pertaining to the evaluation, abatement, control, and prevention of air pollution consistent with the intent and purpose of this Act after public notice and hearings.
4. To establish, repeal, or modify air quality standards for the atmosphere of this state as a whole or any part thereof on the basis of providing air quality necessary to minimize air pollution consistent with the purposes of this Act after public notice and hearings.
5. To establish, repeal, or modify emission standards relating to the maximum quantities of air contamination that may be emitted from any air contaminant source; and requirements for open burning, including the prohibition thereof, for this state as a whole, after public notice and hearings.
6. To consider complaints of conditions reported to, or considered likely to, constitute air pollution; and instruct the Department to conduct investigations of such complaints upon receipt of the written petition of any state agency, the governing body of any political subdivision, a local board of health, or 25 affected residents of the state.

7. To hold public hearings as it may deem advisable and necessary to accomplish the purposes of this Act, and in connection therewith issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to such hearings.
8. To issue or enter such order or determination as may be necessary to effectuate this Act. If a condition of air pollution is found to exist, such order may require the taking of such action as is indicated by the circumstances to cause the abatement or control of such condition.

In making orders and determinations, the Commission shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved, including, but not limited to: the character and degree of injury to, or interference with, the protection of the health and the physical property of the public; the practicability of reducing or limiting the emissions from such air pollution source; and the suitability or unsuitability of the air pollution sources to the area in which located.

9. Cause to be instituted, in the name of the state, in a court of competent jurisdiction, legal proceedings to compel compliance with any order or determination entered by the Commission.
10. To classify air contaminant sources according to levels and types of emissions, and other relative characteristics, and require, by rule and regulation, reporting for any such class or classes of information including location, size, and height of contaminant outlets, fuels used, the nature and the time periods of emissions, and such other relevant information,
11. To require, by rules and regulations promulgated hereunder, notice of the construction or the installation of any equipment which may cause or contribute to air pollution; and the submission to the Department of plans and specifications, or such other information as is deemed necessary, for installation of equipment from which air contaminants may be emitted to the atmosphere.

Such standards, rules, or regulations shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce said levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind of composition of fuels permitted to be sold, stored, or used.

12. Review and evaluate local air pollution control programs with respect to whether such programs are not inconsistent with the provisions and purposes of this Act, and any rules and regulations promulgated thereunder.
13. Represent the state in any and all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of air pollution.
14. Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, interstate or interlocal agencies, the Federal Government, and with affected groups in the control of air contamination sources within the state.
15. Encourage voluntary cooperation by persons or other affected groups in restoring and preserving a reasonable quality of air within the state.
16. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions to the greatest extent possible.
17. Provide technical assistance to political subdivisions requesting such aid for the furtherance of air pollution control.
18. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement prevention, and control.
(Sec. 4)

B. Department of Health

1. Provide to the Commission such facilities and services as may be needed in conducting their activities.
2. Provide such technical, scientific, and other services as may be required for the purpose of effectuating the provisions of this Act.
3. Conduct investigations of complaints received directly or referred by the Commission, or such other investigations as are deemed necessary to effectuate the provisions of this Act; and participate, on behalf of the state, in hearings before the Commission.
4. Enter at all reasonable times in and upon any private or public property except private dwellings for the purpose of investigating an actual or possible source of air pollution, or of ascertaining the state of compliance with this Act or rules and regulations promulgated hereunder.
5. Grant, modify, or deny permits, under the direction of the Commission, for the installation of new equipment capable of emitting air contaminants to produce air pollution, and for related control equipment, subject to pertinent rules and regulations promulgated hereunder.

No equipment which may cause or contribute to air pollution, or which is intended primarily to prevent or to control the emission of air contaminants, shall be installed, altered in such a way that it significantly affects operational efficiency, or placed in use unless a permit has been issued for such equipment.

Upon denial of a permit, the person applying for such permit shall be notified and informed of the reason or reasons therefor, and such person shall be entitled to a hearing before the commission.

6. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state and the several parts hereof.

7. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.
8. Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the Federal Government, for the purpose of conducting any of the functions of this Act. (Sec. 5)

IV. CONFIDENTIAL RECORDS

Information received by the Commission or the Department through filed reports, inspections, or as otherwise authorized under this Act concerning trade secrets, secret industrial processes, or other privileged communications shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of the Act or of any rules and regulations promulgated thereunder, or as otherwise authorized or ordered by appropriate court action or proceedings. Nothing herein shall be construed to prevent the Commission or the Department from compiling or publishing analyses or summaries relating to the general condition of the atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential. (Sec. 8)

V. VIOLATIONS; PROCEDURE

Whenever the Commission has evidence that a violation of any provision of this Act, or rule, regulation, or standard promulgated hereunder has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this Act, rule, regulation, or standard alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time.

Any such order shall become final unless, no later than 30 days after the date the notice and order are received, the person or persons named therein request a hearing before the Commission. In lieu of an order, the Commission may require that the alleged violator or violators appear before it for a hearing at a time and place specified and answer the charges.

The alleged violator or violators may file a written answer to a notice of violation or order and may appear in person at such hearing or by representative, with or without counsel, and may make oral argument, offer testimony, and cross examine witnesses. The testimony taken at the hearing shall be under oath and recorded, and copies of the transcript shall be furnished to the alleged violator or violators upon his request.

If after a hearing the Commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions or air pollution involved. If after hearing on an order, the Commission finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing shall prescribe the date or dates by which violation or violations shall cease and may prescribe time tables for necessary action in preventing, abating, or controlling the emissions or air pollution.

Nothing in this Act shall prevent the Commission and the Department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

If the Commission, its technical secretary, or the commissioner has evidence that any person is causing or contributing to air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, either may, without notice or hearing, issue an emergency order reciting that an emergency exists and requiring such person or persons to reduce or discontinue immediately the emission of air contaminants. Such order shall be effective immediately. Upon issuance of such order the Commission or its authorized representative shall fix a place and time of hearing, such hearing to be held before the Commission not later than 24 hours thereafter. Not more than 24 hours from the commencement of such hearing, the Commission shall affirm, modify, or set aside such order. (Sec. 9).

VI. INJUNCTIONS

If measures to prevent or correct air pollution which is in violation of any rule or regulation promulgated by the Commission are not taken in accordance with an order of the Commission, or

if the Commission or its authorized representative has evidence that an emergency exists by reason of air pollution, requiring immediate action to protect the public health or property, the attorney general shall, upon receiving a request from the Commission or its authorized representative, bring an action in the name of the state for an injunction to prevent any further or continued violation of such rule or regulation or such order. In an action for a temporary injunction, any previous findings of the Commission, after due notice and hearing, shall be prima facie evidence of the fact or facts found therein. (Sec. 11).

In all proceedings with respect to any alleged violation of the provisions of this Act or any rule or regulation promulgated hereunder, the burden of proof shall be upon the Commission except in an action for a temporary injunction. (Sec. 12).

VII. VARIANCES

Any person who owns or is in control of any plant, building, structure, process, or equipment may apply for a variance from rules, regulations, or standards governing the quality, nature, duration, or extent of emissions by filing an application with the technical secretary. The application shall be accompanied by such information and data as the Commission may require.

The Department shall promptly investigate such application and make a recommendation to the Commission as to the disposition thereof. The Commission may grant such variance if it finds that:

- a. The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or property; and
- b. Compliance with the rules, regulations, or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

Any variance granted shall be granted for such period of time, not exceeding one year, as shall be specified by the Commission at the time of the grant of such variance. Any variance may be granted by the Commission upon the condition that the person who received it shall make such periodic reports to the Commission as the Commission shall specify as to the progress which such person shall have made toward compliance granted. Such variance may be extended from year to year by affirmative action of the Commission. (Sec. 13).

VIII. JUDICIAL REVIEW

An appeal may be taken by any aggrieved party from any order issued or entered to the district court of the county in which the alleged offense was committed. An order by the Commission shall not be stayed by an appeal except by order of the district court after hearing for good cause shown by the aggrieved party. The hearing on appeal shall be tried as a suit in equity and shall be de novo. The court may receive additional testimony and evidence and may affirm, modify, or reverse the order of the Commission. (Sec. 10).

IX. PENALTY

In the event the Commission shall determine that any final order or determination made by it is being violated, the Commission may cause to have instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent any further violation of such final order or determination or for the assessment of such penalty not to exceed \$200 per day for each day such violation continues as the court may deem proper, or both. It shall be the duty of the attorney general to bring such actions at the request of the Commission in the name of the people of the state of Iowa. (Sec. 16),

2. Local Programs

Any political subdivision is hereby authorized, in addition to any other power vested by law, to conduct an air pollution control program within the boundaries of its jurisdiction, and to conduct air pollution control programs jointly with other political subdivisions of this state or of other states. In conducting such programs, political subdivisions shall have the power and the authority to adopt and enforce rules, regulations, or standards for the purpose of securing and maintaining adequate air quality within the respective jurisdictions.

If the board of supervisors in any county establishes an air-pollution program and has obtained a certificate of acceptance, the agency implementing the program shall have jurisdiction over and may regulate air pollution within the county including any incorporated areas therein unless and until such incorporated areas shall obtain a certificate of acceptance as a joint or separate agency. (Sec. 14).

When an air pollution control program conducted by a political subdivision, or combination of two or more political subdivisions, is deemed upon review in accordance with this Act to be consistent with the provisions of this Act or rules and regulations promulgated thereunder, the Commission shall accept such program in lieu of administration of the regulatory provisions of this Act by the state within the jurisdiction involved. Nothing contained herein shall be construed to limit the power of the Commission to take emergency action under the provisions of this Act.

In evaluating such a local air pollution control program, consideration shall be given to whether such program provides for the following:

- a. Ordinances, rules, regulations, or standards establishing requirements consistent with, or more strict than, those imposed by this Act or rules, regulations, and standards promulgated thereunder;
- b. Enforcement of such requirements by appropriate administrative and judicial process; and
- c. Administrative organization, staff, financial, and other resources necessary to carry out its program effectively and efficiently.

When a local air pollution control program has been deemed to be consistent with the provisions of this Act, the Commission shall issue a certificate of acceptance to the appropriate local agency.

If the Commission shall determine at any time that a local program is being conducted by a political subdivision holding a certificate of acceptance in a manner inconsistent with the substantive provisions of this Act or rules and regulations promulgated thereunder, the Commission shall provide to the political subdivision a notice reciting the deviations from the standards and the corrective measures to be completed within a reasonable period of time. If the Commission finds, after such period of time, that the political subdivision has failed to take the specified corrective action, it shall suspend the certificate of acceptance and shall administer the regulatory provisions of this Act in such political subdivision until such standards are met. Upon receipt of evidence that is deemed to show correction of the cause of such suspension, the Commission shall reinstate a suspended certificate of acceptance, and the political subdivision shall resume the regulatory functions involved upon receipt of appropriate notice from the Commission. In cases where the certificate of acceptance is suspended, the political subdivision shall be entitled to a hearing.

Nothing in this Act shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the effective date of this Act; provided that within two years from such date any such program shall meet all requirements of this Act for a local air pollution control program and an application for a certificate of acceptance is submitted to the technical secretary. (Sec. 15).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Kansas 1/

1. Air Pollution Control

I. POLICY STATEMENT

It is declared to be the public policy of the State to achieve and maintain reasonable levels of air quality which will protect human health and safety, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the State and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the State. It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality. To this end it is the purpose of this act to provide for a coordinated statewide program of air pollution prevention, abatement and control, for an appropriate distribution of responsibilities among the State and local units of government, and to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions, and to provide a framework within which all values may be balanced in the public interest. (§ 1).

II. DEFINITIONS

"Air contaminant" means dust, fumes, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof, but not including water vapor or steam condensate. (§ 2(a)).

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property. (§ 2(b)).

"Emission" means a release into the outdoor atmosphere of air contaminants. (§ 2(c)).

"Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the State, trust, estate or any other legal entity. (§ 2(d)).

1/ Citations refer to Senate Bill No. 428, Approved April 21, 1967.

III. ORGANIZATION

There is created an air quality conservation commission in the department of health (§ 3) which shall consist of eight members, four of whom shall be the State health officer, the director of the Kansas department of economic development, the commissioner of the Kansas department of labor, and the secretary of the State board of agriculture or their designees, and four members, citizens of Kansas, to be appointed by the governor. The four members to be appointed by the governor shall as far as practicable be selected so that they will be residents of different parts of the State. At least one shall represent industry, at least one shall represent the general public, and at least one shall represent local health departments or local government. Members of the Air Quality Conservation Commission shall serve for three year terms. (§ 4(a)).

Five members of the commission shall constitute a quorum to transact business and any three members designated by the chairman may hold hearings. (§ 4(b)).

The commission shall hold at least four regular meetings each year and such additional meetings as the chairman deems desirable, at a place and time to be fixed by the chairman. Special meetings shall be called by the chairman upon written request of any three members. (§ 4(c)).

The members of the commission, including the secretary, shall receive no salary for services but shall be reimbursed for necessary and actual expenses incurred in attendance at meetings of the commission and in the performance of any duties authorized by the commission. (§ 4(d)).

IV. POWERS OF THE COMMISSION

The commission shall have the power to:

- (1) Adopt, amend and repeal rules and regulations implementing and consistent with this act.
- (2) Hold hearings relating to any aspect of or matter in the administration of this act concerning air quality control, and in connection therewith, compel the attendance of witnesses and the production of evidence.

- (3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings,
- (4) Require access to records relating to emissions which cause or contribute to air pollution.
- (5) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in this State.
- (6) Encourage voluntary cooperation by persons, or affected groups to achieve the purposes of this act.
- (7) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide technical and consultative assistance therefor.
- (8) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control.
- (9) Determine by means of field studies and sampling the degree of air pollution in the State and the several parts thereof.
- (10) Collect and disseminate information and conduct educational and training programs relating to air pollution.
- (11) Advise, consult and cooperate with other agencies of the State, local governments, industries, other States, interstate or interlocal agencies, and the Federal government, and with interested persons or groups.
- (12) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules and regulations in force pursuant thereto, or any other provision of law.

- (13) Accept, receive and administer grants or other funds or gifts from public and private agencies including the Federal government for the purpose of carrying out any of the functions of this act. Such funds received by the department of health pursuant to this section shall be deposited in the State treasury to the account of the department of health. (§ 5).

V. POWERS OF THE DEPARTMENT

The department, through the air quality conservation division, shall have the power to:

- (1) Provide to the commission such facilities and services as may be needed in conducting the activities specified herein.
- (2) Publish and enforce the rules, regulations and standards promulgated hereunder. (§ 6).

VI. CLASSIFICATION AND REPORTING

- A. The commission, by rule or regulation, may classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. (§ 7(a)).
- B. Reports may be required as to physical outlets, processes and fuels used, and the nature and duration of emissions and as to such other information as is relevant to air pollution and available or capable of being assembled in the normal course of operations. (§ 7(b)).

VII. ADDITIONAL CONTAMINANT CONTROL MEASURES

The commission may, by regulation, prohibit the installation, alteration or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution, unless a permit therefor has been obtained from the commission (§ 8(a)).

The commission may require that applications for such permits shall be accompanied by plans, specifications, and such other information as the commission deems necessary. (§ 8(b)).

VIII. INSPECTIONS

The commission may designate representatives who may enter and inspect any property at any reasonable time for the purpose of investigating either an actual or possible source of air pollution or of ascertaining the State of compliance with this act and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth levels of emissions and any other facts found which relate to compliance status. (§ 9).

IX. EMISSION CONTROL REQUIREMENTS

The commission shall establish emission control requirements, and requirements for open burning (including appropriate prohibition thereof). Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act, and in order to take necessary or desirable account of varying local conditions. (§ 10(a)).

The commission shall establish reasonable ambient air quality standards for the State as a whole, or any part thereof, and shall require the emission control requirements of any local program to be consistent with such standards in addition to meeting any other requirements pursuant to this section. (§ 10(d)).

X. ENFORCEMENT

Whenever the director or commission has reason to believe that any person has violated any provision of this act, or of any rule or regulation adopted pursuant thereto, notice shall be served upon the alleged violator or violators. If a request is made for a hearing within fifteen days of said notice, the commission shall notify the alleged violator or violators of the date of hearing. (§ 11(a)).

At any such hearing, the commission shall have the power to administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of any books, papers, records, correspondence and other documents relevant to the inquiry, and may cause the deposition of witnesses, concerning matters relating to air quality control, to be taken.

Each witness who appears before the commission by its order, other than a State officer or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the chairman of the commission. (§ 11(b)).

If, after hearing, or if a hearing is not requested within fifteen days, the commission finds that a violation or violations have occurred it shall issue an appropriate order or orders for the prevention, abatement or control of the emissions or air pollution involved. Any such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the emissions of air pollution. If the violator does not comply with the order, the commission may initiate appropriate action for the recovery of a penalty. (§ 11(c)).

The commission shall attempt to obtain voluntary compliance with this act through warning, conference or any other appropriate means. (§ 11(d)).

XI. EMERGENCY PROCEDURE

If the director finds that any person is causing or contributing to air pollution and that such pollution creates an emergency which requires immediate action to protect human health or safety, the director, with the concurrence of the governor, shall order such person or persons to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order the director shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the commission. (§ 12(a)).

Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office. (§ 12(b)).

XII. VARIANCES

Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the commission for a variance from rules or regulations governing the quality, nature, duration or extent of emissions. The application shall be accompanied by such information and data as the commission may reasonably require. The commission may grant such variance if it finds that:

- (1) The emissions occurring or proposed to occur do not endanger human health or safety; and
- (2) Compliance with the rules or regulations from which variance is sought would produce serious hardships. (§ 13(a)).

No variance shall be granted except after public hearing on due notice and until the commission has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. (§ 13(b)).

If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be good only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternate measures that the commission may prescribe.

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the commission finds is requisite for the taking of the necessary measures.

If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in item 1 and 2 of this subparagraph, it shall be only for such time as the commission considers reasonable. (§ 13(c)).

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the commission on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the commission finds that renewal is justified. No renewal shall be granted except on application therefor. (§ 13(d)).

Any person adversely affected by a variance or renewal granted by the commission may obtain judicial review thereof by a proceeding in the district court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious. (§ 13(e)).

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 11 of this act to any person or his property. (§ 13(f)).

XIII. HEARINGS

No standard, emission requirement, rule or regulation, other than the issuance of an emergency order, shall take effect except after public hearing, and approval by a majority of the commission present and voting. (§ 14(a)(b)).

XIV. JUDICIAL REVIEW

Any person aggrieved by any order of the commission may have judicial review thereof as provided in code of civil procedure. (§ 14(c)).

XV. CONFIDENTIALITY OF RECORDS

Any records or other information furnished to or obtained by the Department of Health and commission concerning one or more air contaminant sources, relating to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the commission and other departments, agencies and officers of the State government. Records or information may be used by any department, commission, agency or officer of the State or Federal government in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: Provided, That such analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section (§ 15).

XVI. PENALTIES

Any person who violates any order of the commission issued under the provisions of this act, or any rule or regulation in force pursuant thereto, shall be subject to a fine not to exceed \$1,000. Each day such order is violated shall constitute a separate offense. (§ 18(a)).

Additional orders made pursuant to this act may be enforced by injunction or other appropriate remedy, and the department of health shall have power to institute and maintain in the name of this State any and all such enforcement proceedings. (§ 18(b)).

Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor. (§ 18(c)).

XVII. LIMITATIONS

Nothing in this act shall be construed to:

- (1) Authorize the commission to make any rule, regulation, recommendation, determination or order with respect to the condition or quality of the outdoor atmosphere, if the condition or quality level and its effects are confined entirely to the outdoor atmosphere within the boundaries of the industrial or manufacturing property within which the air contaminants in question are or may be emitted.
- (2) Affect the relations between employers and employees.
- (3) Supersede or limit the applicability of any law or ordinance relating to industrial health, safety, or sanitation.
- (4) Authorize the commission, director or any local board of health to make any rule, regulation, recommendation, determination or order, affecting any public utility, obligated by law to continuously provide its service to the public, until it has obtained the approval thereof from the State corporation commission of Kansas, after a public hearing thereon to determine if such proposed rule, regulation, recommendation, determination or order is consistent with the obligation of the public utility to continuously provide the public with its services. (§ 19).

2. Local Programs

Cities and counties are authorized individually or jointly, to conduct tests and surveys to determine the degree of purity of the air within its jurisdiction, and may request consultation, technical assistance and cooperation from the commission in conducting such tests and surveys. If such tests and surveys indicate that unsatisfactory air quality exists, is likely to exist or is likely to occur, the governing body of said city or county shall have the authority, upon approval of the commission, to establish a local air quality conservation authority.

Local air quality control authorities shall have authority to enforce the rules, regulations and standards adopted by the Commission and to establish such additional rules, regulations and standards as necessary to maintain satisfactory air quality within their jurisdiction: Provided, That any rule, regulation or standard established by a local air quality conservation authority pertaining to health hazard shall be in compliance with the rules and regulations set forth for that area by the Commission.

A local air conservation program may contain variations from State Commission regulations only if the State Commission gives its approval to the variation after a public hearing on due notice.

3. Motor Vehicle Pollution Control

As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this act, the commission may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any rules or regulations pursuant to this section shall be consistent with provisions of Federal law or regulations, relating to control of emissions from the vehicles concerned. The commission shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to Federal law.

No motor vehicle shall be issued an inspection sticker as required pursuant to any motor vehicle inspection law of this State, unless all parts thereof or equipment incorporated therein or placed thereon for the purpose of preventing or reducing emissions have been inspected and appear to be in good working order.

Removal, destruction, obstruction or failure to replace a part or piece of equipment constituting an operational element of the air quality control system or mechanism of a motor vehicle shall, unless permitted by law, subject the owner or operator to suspension or cancellation of the registration for the vehicle by the State motor vehicle department. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been replaced in good working order.

The commission shall consult with the State motor vehicle department and furnish it with technical information relevant to motor vehicular features and equipment designed to prevent or reduce emissions, and the inspection of such features and equipment. (§ 17(a), (b), (c), and (d).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Kentucky

1. Air Pollution Control Commission 1/

I. GENERAL STATEMENT

This act creates an 11 member air pollution control commission in the department of health. The board is empowered to adopt rules and regulations, hold hearings, conduct studies, fix standards, and represent the state in negotiations.

The act expressly prohibits any person, directly or indirectly, to emit into or discharge into the air, or to cause, permit, or allow to be emitted or discharged into the air any air contaminants.

II. DEFINITIONS

- A. "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity whatsoever. (Sec. 224.310(4))
- B. "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant or animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. (Sec. 224.310(6))
- C. "Air Contaminant Source" is any and all sources of emission of air contaminants, public or private. (Sec. 224.310(8))

III. KENTUCKY STATE AIR POLLUTION CONTROL COMMISSION

A. Composition and Organization

The commission consists of 11 members, five governmental and six public, appointed by the governor for four year terms. The governmental members are the commissioners of health, commerce, natural resources, agriculture, and the attorney general. Of the six public members, one shall be a member of the general public, at least one shall be a licensed professional engineer trained in air pollution control, one

1/ Citations refer to House Bill number 259, approved March 8, 1966, as codified at Chapter 224 of Balwin's Kentucky Revised Statutes Annotated, 1967 Cumulative Supplement.

shall represent an air pollution control district, one shall represent the college of engineering, University of Kentucky. At least three of the public members shall represent industry and be experienced in matters of air pollution control. (Sec. 224.420(1)(g))

Commonwealth officers made members of the commission may file a written order with the secretary to designate a deputy or other representative in his department to serve in his absence. (Sec. 224.420(2)(c))

Regular meetings will be held at least once in every three months. Special meetings may be called by the chairman or by three members. Five days notice prior to the meeting must be given each member. (Sec. 224.420(6))

Seven members constitutes a quorum. (Sec. 224.420(6))

B. Powers and Duties

The Kentucky Air Pollution Control Commission shall have the following powers and duties:

- (1) To cooperate with United States Public Health Service and other Federal agencies, to receive Federal funds available under existing or future legislation. To accept, receive, administer grants and other funds from public and private sources. (Sec. 224.430(9); 224.440(1)(2))
- (2) To cooperate with other state, interstate agencies, industries, state agencies and subdivisions. (Sec. 224.430(8), (224.440(1))
- (3) To review and make recommendations, establish priorities, accept and administer loans and grants from other than Federal sources. (Sec. 224.440(4))
- (4) To issue, amend and repeal rules and regulations consistent with this act and to issue orders necessary to the prevention, abatement and control of existing or threatened pollution and to effectuate the act's purpose. (Sec. 224.430(1,3,11))
- (5) To hold hearings, compel witness attendance, and produce evidence. (Sec. 224.430(2))

- (6) To require record maintenance and availability in regard to operations which may cause or contribute to air pollution. (Sec. 224.430(4))
- (7) To secure necessary scientific, technical, administrative and operational services by contract or otherwise. (Sec. 224.430(5))
- (8) To prepare comprehensive air pollution prevention, abatement, and control plans and conduct educational and training programs in regard to air pollution. (Sec. 224.430(6,7))
- (9) To establish, modify or amend various air pollutants ambient air and emission standards from any source. Such levels or concentrations shall be controlling throughout the state. (Sec. 224.430(10)(a))
- (10) To adopt rules and regulations in regard to hearing procedures. (Sec. 224.430(12))
- (11) To require the use of all available, practical and reasonable methods of air pollution control and prevention. (Sec. 224.340)
- (12) To issue regulations to:
 - a. Require persons engaged in operations resulting in air pollution to register with the commission and to file certain reports. (Sec. 224.350)
 - b. Prohibit installing, altering or using certain contaminating or controlling machines, equipment or devices without a permit. (Sec. 224.360(1))
 - c. Require that a permit application contain certain plans, specifications, or other information. (Sec. 224.360(2))
 - d. Issue, suspend, revoke or renew permits. (Sec. 224.360(3))
- (13) To enter and inspect the property, premise or place to investigate an actual or suspected air pollution source or to ascertain the state of compliance with regulations. (Sec. 224.370)

IV. EXECUTIVE SECRETARY

- A. The health department chief engineer shall be the executive secretary. He may perform such functions and duties and exercise such authority as the commission delegates to him. He may designate one or more assistants to act in his place when absent or otherwise unable to perform his duties. (Sec. 224.420(4))
- B. When he finds a person causing or contributing to air pollution and creating an emergency, he shall order, with written notice to the governor, such person to reduce or discontinue immediately the air pollution. He then shall fix a place and time for a hearing before the commission at which the executive secretary's order shall be affirmed, modified or set aside. (Sec. 224.400)

V. PROCEDURE

A. Public Hearings

Hearings on violations may be conducted at a regular or special meeting or by a hearing officer appointed by the commission to serve in its place. (Sec. 224.460(1))

B. Rules

In adopting rules and regulations the commission shall give due recognition to the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere. It shall take into consideration in this connection such factors, among others, found by it to be proper and just, existing physical conditions, public benefit that the degree of conformance therewith that may be proper as to an essentially residential area of the state may not be proper as to a highly industrial area of the state, and, further, the relationship between the intensity and composition of air pollution and the health of the public and damage to or interference with enjoyment of property. It shall give reasonable consideration to the interests of all parties concerned. (Sec. 224.340)

C. Local Air Pollution Districts

- (1) Every county establishing a local Air Pollution Control Program (Chapter 77) shall submit a synopsis of its program, standards and procedures to the State Department within 90 days of enactment or of local program establishment. (Sec. 224.450(1))

- (2) If the commission determines a Program meets proper standards and that such program will be administered correctly, the jurisdiction for the purposes of this act shall be ceded to the local Program Administrative Agency. The commission may reassume jurisdiction after formal hearing when the local Program doesn't meet state standards. (Sec. 224.450(2))

D. Enforcement

- (1) The commission shall cause a written notice to be served on an alleged violator which specifies what provision of the act or rule or regulation is alleged violated. It may order corrective action, and such order becomes final unless the person named requests a hearing less than 30 days after the order is served. The commission may require an alleged violator to appear before it for a hearing in lieu of an order. (Sec. 224.390(1))
- (2) After a hearing the commission shall affirm, modify or rescind its order or issue appropriate orders for the control of the air pollution involved. Such order shall include the date by which the violation shall cease and may prescribe time-tables for necessary preventive or controlling action. (Sec. 224.390(2))
- (3) The commission shall attempt compliance through warning, conference or other appropriate means. (Sec. 224.390(3))

E. Variances

- (1) Any person owning or controlling a plant, business, process, etc., may apply to the commission for an exemption or partial exemption from rules or regulations promulgated under this act in regard to quality, nature, duration or extent of air pollutants discharged. (Sec. 224.410(1))
- (2) Such exemption may be granted under the following conditions:
 - a. When the discharge does not constitute a danger to public health or safety. (Sec. 224.410(1)(a))

- b. When rule compliance would produce serious hardship without equal or greater benefit to the public. (Sec. 224.410(1))
 - c. After public hearing on due notice and after the commission has considered the relative interests of the applicant, other property owners apt to be affected by discharges, and the general public. (Sec. 224.410(1)(c), (2))
- (3) Exceptions shall be for a period of one year and may be renewed if no justified complaints have been made to the commission. Application for renewal must be made at least 30 days prior to exemption expiration. Immediately prior to renewal the applicant shall give public notice of his intentions. (Sec. 224.410(3))
- (4) An exemption, partial exemption or renewal is not a right. (Sec. 224.410(2))

F. Confidential Information

Any records or other information furnished to the commission in regard to air pollution sources which relate to processes or production unique to the owner or operator which would tend to adversely affect the competitive position of such owner or operator shall be only for the confidential use of the commission and other departments, agencies and officers of the state government unless such owner or operator shall expressly agree to their publication or availability to the general public.

Such records or information may be used by state government officials to compile or publish analyses or summaries in regard to the general condition of the outdoor atmosphere provided there is no identification of owners or operators and no confidential information is released. (Sec. 224.380)

VI. JUDICIAL REVIEW

Appeals may be taken from all commission orders within 30 days of rendition of such order at a county circuit court. The affected parties will file a petition stating the grounds for review and assign all errors relied on. The commission shall be named respondent, and service shall be had on the Executive Secretary. The commission shall send its entire original record upon summons. Any party directly affected by the issues on appeal may intervene after the case is properly docketed. The commission findings shall be prima facie evidence of the facts found therein. Appeals shall be taken in the manner prescribed in the Kentucky Rules of Civil Procedure. (Sec. 224.460(2,3))

VII. VIOLATIONS AND PENALTIES

- (1) Violation of any provision of the act, or of any order or determination of the commission or failure to perform duties is liable to civil penalty of a maximum of \$1000 for each violation plus an additional maximum of \$1000 civil penalty for each day such violation continues. (Sec. 224.991(1))
- (2) The attorney general, upon the commission's request, shall bring actions in the name of the commonwealth to recover the penalties and shall bring action for an injunction against any person committing a violation or threatening to commit one. The attorney general's authority is exclusive. (Sec. 224.991(2,4))
- (3) Any person who shall willfully violate any of the provisions of this act or any determination or order of the commission promulgated pursuant to those sections which has become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. (Sec. 224.991(3))

VIII. EFFECTIVE DATE

Approved March 8, 1966.

2. County Air Pollution Control Districts ^{1/}

I. GENERAL STATEMENT

The Kentucky Air Pollution Control Act, enacted in 1952, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof". (§ 77.005(2)).

The statute creates in each county an air pollution control district (§ 77.010) and provides for air pollution control boards to be the governing bodies of such districts. (§§ 77.065, 77.070, 77.115).

II. ADMINISTRATIVE ORGANIZATION

A. Establishment of County Air Pollution Control Districts

An air pollution control district is established in each county with boundaries coextensive with the county. (§ 77.010).

B. Activation of Districts

Air pollution control districts are authorized to function, only after a resolution by the appropriate county fiscal court, and, in addition, in the case of a county containing a city of the first or second class, a municipal ordinance, declaring that there is a need for an air pollution control district to function in the county and the city respectively. (§§ 77.015, 77.055).

The resolution and ordinance are authorized only if, from evidence received at separate public hearings as to which required public notice has been given (§§ 77.020, 77.025, 77.040) it is found there is need for a district to function because:

- (1) The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable

^{1/} Citations refer to Kentucky Revised Statutes - July 1960.

number of persons, so as to interfere with the comfortable enjoyment of life or property. (§§ 77.030; 77.035).

- (2) It is not practical to rely upon the enactment or enforcement of local ordinances to prevent or control air pollution. (§§ 77.030; 77.035).

C. Governing Body of District

An air pollution control board is the governing body of the air pollution control district. (§ 77.115).

(1) Organization and Composition

- a. The members of the fiscal court of a county are, ex officio, the members of the air pollution control board and they and their personnel are to perform the same duties for the board as for the county. (§ 77.065).
- b. In the county containing a city of the first or second class the air pollution control board consists of three members appointed by the county judge, and four members appointed by the mayor of the city of the first or second class contained within the county. (§ 77.070).
- c. Persons interested in the sale of air pollution control equipment are ineligible for membership on the board or for employment by the board, (§ 77.110).
- d. Meetings of each board are held at least once each calendar month. (§ 77.080).
- e. In a county containing a city of the first or second class the air pollution control board, in July of each year, elects from its membership a chairman and a vice-chairman. (§ 77.085).
- f. A majority of the members of the board constitute a quorum for all purposes. The affirmative vote of at least a majority of the membership of the board is necessary for the adoption of any motion, measure, or resolution unless the bylaws of the board require a larger number. (§ 77.080).

- g. All air pollution control board members serve without compensation other than recovery of actual expenses from district funds. (§ 77.075).

(2) Duties and powers

- a. In general, the district has the powers of a body corporate. (§§ 77.050--77.060).
- b. The board may make and enforce all needful orders, rules, and regulations necessary and proper to accomplish the purposes of the statute (§ 77.180) after a public hearing of which the required public notice has been given. (§ 77.185).
- c. The board of a district containing a city of the first or second class is required to employ a secretary-treasurer and an air pollution control officer, neither of whom may be a member of the board, and may provide for them to employ various personnel. (§ 77.085).

The board of a district not containing such a city may appoint an air pollution control officer and provide for him to employ other personnel. (§ 77.090). The air pollution control officer is directed to enforce the Act and the rules and regulations of the board. (§ 77.145). He and his assistants are given by statute rights of entry and inspection, (§ 77.165), and the status of peace officers. (§ 77.145).

- d. The board may employ and remove professional and technical advisers, experts and other employees at its pleasure as it deems necessary. (§ 77.095).
- e. The board must require bond of the secretary-treasurer and air pollution control officer and may require it of other officers and employees. (§ 77.100).
- f. The air pollution control board appoints a hearing board of three members, to serve, after the initial terms, for staggered terms of three years each, (§ 77.105).

- g. The air pollution control board may fix reasonable limits for particular air contaminants or other material which in their opinion may cause injury, detriment, nuisance, or annoyance to the public (§ 77.155).
- h. The air pollution control board may by regulation require a permit before any equipment which may cause the issuance of air contaminants may be built, erected, altered, replaced, used or operated, and, as a condition of the permit may require use of approved equipment to reduce or eliminate air pollution. Four statutory exceptions to such requirements are:
 - (1) Mobile equipment;
 - (2) Dwellings for less than five families;
 - (3) Agricultural equipment; and
 - (4) Repairs or maintenance of approved equipment (§ 77.195).
- i. The air pollution control board may contract with the county or any city within the district for assistance in regulation of installations which may issue air contaminants (§ 77.195).

D. Financing

- (1) In a county where the air pollution control district has been activated, the fiscal court and the legislative body of a city of the first or second class, if there is one, may annually appropriate funds to the district, (§ 77.125). Provisions are also made for the preparation of budgets by the boards and for related fiscal procedures. (§§ 77.130--77.140).
- (2) Fees
 - a. A schedule of permit fees may be established by the board to cover the cost of issuing permits and inspections. (§ 77.205). These fees may be paid directly to a city when a contract for assistance has been made or into the district treasury. (§ 77.210).

- b. A schedule of fees covering the cost of administering the variance provisions (§§ 77.245--77.275) may be established. The fees are paid into the district treasury. (§ 77.255).

E. Prohibited Emission of Air Contaminants and Operations Exempted

(1) Prohibited emissions

The discharge from any single source of emission of any air contaminant which is as dark or darker than Ringelmann No. 2 and of such opacity as to obscure an observer's view to a degree equal to or greater than Ringelmann No. 2 for a period or periods aggregating more than three minutes in one hour is prohibited.

It is also prohibited to discharge such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to or which endanger the comfort, repose, health or safety of the public, or which cause or tend to cause injury to business or property. (§ 77.155). (See also II C 2 g. of this digest.)

(2) Exemptions

Exempted from the prohibition are buildings used exclusively for private residences and containing fewer than five dwelling units, equipment used for agricultural operations, and smoke from fires authorized by any public officer. Also exempted are air contaminants emitted when a fuel consuming device is being cleaned and a new fire being built therein, in which case smoke greater than the prohibited density is permitted for no longer than six minutes in every 60 minutes. (§ 77.160).

III. PROCEDURES

A. Composition and Organization of Hearing Board

- (1) The hearing board of an air pollution control district consists of three members appointed by an air pollution control board (§ 77.105). It is required to select a chairman from its members. (§ 77.285).

- (2) The board may hold a hearing en banc or may designate one or two of its members to hold a hearing. (§ 77.285).
- (3) If two or three members conduct a hearing the concurrence of two is necessary for a decision. (§ 77.285).
- (4) The board may issue subpoenas to be served as in a civil action. (§ 77.290).
- (5) The board may require witnesses to be sworn. (§ 77.300).

B. Permits--Suspension and Revocation of Permits

- (1) An air pollution control officer may suspend a permit if the permittee does not furnish him with required information but must serve on the permittee notice in writing of and the reasons for such suspension. (§§ 77.220). When the information is furnished, the permit is to be reinstated. The air pollution control officer may reinstate the permit when "good reasons" exist. (§ 77.220(3)).
- (2) Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing. (§ 77.220).
- (3) An air pollution control officer may request a public hearing regarding revocation or suspension of a permit. (§ 77.225).
- (4) The hearing board must give 10 days' notice of the time and place of the public hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified. (§ 77.225).
- (5) After public hearing the hearing board may continue the suspension of a permit, find that no violation exists and reinstate an existing permit, or remove the suspension pending furnishing by the permittee of the information required. (§ 77.230).

C. Variances

- (1) The hearing board may permit variances. (§ 77.245). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant. (§ 77.250).
- (2) After public hearing held after requisite notice the hearing board may revoke or modify any variance. (§ 77.265).
- (3) Statutory standards for granting a variance are prescribed which include a finding that compliance will result in the closing of a lawful business without sufficient corresponding benefit in the reduction of pollution. (§ 77.260).

D. Appeals

Appeal may be taken by a party to the hearing, including the air pollution control district, from the finding of the hearing board to the circuit court of the county in which the district is located and from the circuit court to the Court of Appeals of Kentucky, (§ 77.305).

IV. VIOLATIONS AND PENALTIES

- A. The making of false statements in applications, reports, etc.; the failure to supply required information; the failure to obtain required permits or operations contrary to permit, and failure to comply with regulations are included as violations of the statute. (§ 77.235).
- B. Violations of the statute are punishable by fine (§ 77.990) and may be enjoined (§§ 77.175; 77.240).
- C. Subpoenas issued by a hearing board are enforced by contempt proceedings and attachment of the person. The same penalties and punishment may be imposed as in the case of a witness subpoenaed in a trial of a civil cause before a circuit court. (§ 77.295).

V. SCOPE AND CONSTRUCTION

The statute does not pre-empt the field and does not prohibit the enactment or enforcement of any local ordinance stricter than therein provided. (§ 77.170).

VI. EFFECTIVE DATE

The effective date of this chapter is March 14, 1952.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Louisiana

1. Louisiana Air Control Law 1/

I. GENERAL STATEMENT

This law is declared to be the exclusive means within the State to control air pollution. An Air Control Commission is created and authorized to adopt rules and regulations, hold hearings, enter orders, and represent the State in negotiations of interstate compacts. Provision is made for judicial review of Commission orders and for enforcement of final orders through injunctions.

II. DEFINITIONS

- A. "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural (40: § 2202(A)).
- B. "Source" is any and all points of origin of the items defined in (A) above, whether privately or publicly owned or operated (40: § 2202(B)).
- C. "Undesirable levels" of the items defined in Section 2202(A) is the presence in the atmosphere of one or more of such items or combinations thereof in quantities and concentrations and of such characteristics, properties and duration as to appreciably injure human life beyond inconvenience or in quantities and concentrations and of such characteristics, properties and duration as to materially injure or interfere with the reasonable use of animal or plant life or property (40: § 2202(C)).
- D. "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision or any other legal entity or their legal representatives, agents or assigns (40: § 2202(E)).

1/ Citations refer to L.S.A. - R.S., Title 40, Chapt. 12.

III. LOUISIANA AIR CONTROL COMMISSION

A. Composition and Organization

The members of the Commission are the President of the State Board of Health, the Director of the State Board of Commerce and Industry, the Commissioner of Agriculture, or their authorized representative, one registered professional engineer, one physician, one individual actively engaged in management of a private manufacturing concern, one person experienced in municipal government. Terms are for four years with no limitation on number of terms. Five members constitute a quorum. The President of the State Board of Health is the chairman. (40: 2203)

B. Powers and Duties

The Commission shall have the power or duty:

- (1) To prepare and develop a general plan for the proper control of the air resources of Louisiana (§ 2204(A)(1)).
- (2) To adopt and promulgate rules and regulations consistent with the general intent and purposes of the law (§ 2204(A)(2)).
- (3) To enter at all reasonable times in or upon any private or public property except private residences or dwellings for the purpose of inspection and investigation (§ 2204(A)(3)).
- (4) To hold hearings upon complaints or petitions for variance and issue subpoenas requiring the attendance of witnesses and the production of such papers and documents as are related to such hearings (§ 2204(A)(4)).
- (5) To enter such orders or determinations as may be necessary to effectuate the purposes of the law (§ 2204(A)(5)(i)).

In making its recommendations, orders, and determinations, the Commission shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:

Louisiana -- Continued

- a. The character and degree of injury to, or interference with, the health and physical property of the people (§ 2204(A)(5)(ii)(a));
 - b. The social and economic value of the source of the undesirable levels (§ 2204(A)(5)(ii)(b));
 - c. The question of priority of location in the area involved, and (§ 2204(A)(5)(ii)(c));
 - d. The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source (§ 2204(A)(5)(ii)(d)).
- (6) To institute legal proceedings to compel compliance with orders (§ 2204(A)(6)).
 - (7) To request and be entitled to receive the assistance of any State educational institution, experiment station, board, department or other State agency when necessary to carry out the provisions of the law (§ 2204(A)(7)).
 - (8) To encourage voluntary cooperation in restoration and preservation of a reasonable degree of air purity within the State (§ 2204(B)(1)).
 - (9) To encourage and conduct studies, investigations and research concerning air control (§ 2204(B)(2)).
 - (10) To collect and disseminate information on air control (§ 2204(B)(3)).
 - (11) To advise, consult and cooperate with other agencies of the State, industries, other States and Federal government, and with interested persons or groups (§ 2204(B)(4)).
 - (12) To represent the State in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts (§ 2204(B)(5)).

(13) To employ and compensate, within available appropriations, such consultant and technical assistants on a full or part-time basis as may be necessary to carry out the provisions of the law and to prescribe their powers and duties (§ 2204(B)(6)).

(14) To accept, receive, and administer grants or other funds or gifts through the State Board of Health acting as agent for the Commission, and accept, receive and receipt for Federal monies (§ 2204(B)(8)).

C. Jurisdictional Limitation

Nothing contained in the law shall be deemed to grant to the Commission any jurisdiction or authority to make any rule, regulation, recommendation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air condition (§ 2204(C)).

IV. TECHNICAL SECRETARY

A. The technical secretary of the Commission shall be the Director of the Division of Public Health Engineering of the State Board of Health or the person who is performing the major duties which, on the effective date of the law, were assigned to that position (§ 2203).

B. Powers and Duties

The Technical Secretary, or his authorized representative, shall have the following powers and duties:

(1) Make the notifications required by Section 2203 (§ 2205(A)).

(2) Attend all meetings of the Commission but shall not be entitled to a vote (§ 2205(B)).

- (3) During the interim between meetings of the Commission, handle such correspondence, make or arrange for such inspections and investigations, and obtain, assemble or prepare such reports and data as the Commission may direct or authorize (§ 2205(C)).

The Technical Secretary shall exercise general supervision over all persons employed by the Commission. He shall be responsible for the investigation of complaints, the recommendation to the Commission of the issuance of formal complaints by the Commission and for the presentation of such complaints before the Commission, and shall have such other duties as the Commission may prescribe (§ 2205(D)).

V. PROCEDURE

A. Hearings

- (1) At any public hearing, all testimony taken before the Commission shall be under oath and recorded stenographically. The transcript so recorded shall be made available to any member of the public or to the respondent or party to a hearing on a complaint upon payment of the usual charges (§ 2209(A)).
- (2) In any such hearings, any member of the Commission may examine witnesses (§ 2209(B)).
- (3) All hearings shall be had before at least five (5) members of the Commission (§ 2209(C)).

B. Rules and Regulations

- (1) Approval in writing of at least four members of the Commission shall be necessary for the adoption, amendment or repeal of a rule or regulation (§ 2206(A)).
- (2) Before a rule may be adopted, amended or repealed, there must be a public hearing on thirty (30) days notice by public advertisement in the official journal of the State setting forth the date, time, place and purpose of such hearing. Opportunity to be heard by the Commission and to examine any witness testifying at the hearing shall be given any persons or their representatives. Any person heard, represented, or requesting

Louisiana-- Continued

notice shall be given written notice by registered mail of the Commission's action (§ 2206(A)).

- (3) No Commission action relative to a rule or regulation shall become effective until a certified copy has been filed with the Secretary of State (§ 2206(A)).
- (4) A rule or regulation or any amendment thereof adopted by the Commission may differ in its terms and provisions as between particular conditions, sources, and areas of the State (§ 2206(B)).
- (5) In adopting rules and regulations, the Commission shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause a need for air control in one area of the State may not cause need for air control in another area of the State and in this connection the Commission shall take into consideration such factors. among others found by it to be proper and just, as:
 - a. Existing physical conditions,
 - b. Zoning classifications,
 - c. Topography and prevailing wind velocities, and
 - d. The fact that a rule or regulation and degree of conformance which may be proper for an essentially residential area may not be proper for a highly developed industrial area. (§ 2206(B)).
- (6) The validity of any rule or regulation may be determined upon the petition of any person for a declaratory judgment addressed to the District Court of the judicial district in which petitioner has his principal place of business, or where the property affected is located, when the rule or regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The Commission shall be made a party to the proceedings, and service shall be made upon the Technical Secretary of the Commission, whose domicile for the purpose of service under the law shall be deemed to be the office of the Commission (§ 2207).

C. Enforcement

- (1) The Technical Secretary must cause investigations to be made upon the request of the Commission or upon receipt of information concerning an alleged violation of the law or any rule or regulation promulgated thereunder. If, in the opinion of the Technical Secretary or of the Commission, such investigation discloses that a violation does exist, he or the Commission shall by private conference, conciliation and persuasion, endeavor to the fullest extent possible to eliminate such violation (§ 2208(A) and (B)).
- (2) If conference, conciliation and persuasion fail and the Technical Secretary files a formal complaint with the Commission, the Commission may have issued and served a written notice and a copy of the formal complaint which specifies both the provision allegedly violated and the manner and extent of such violation. A person so complained against must answer the charges of such formal complaint at a hearing before the Commission not less than thirty (30) days after the date of notice (§ 2208(B)).
- (3) The respondent may file a written answer to the complaint and may appear at the hearing in person or by representative, with or without counsel. He may make oral argument, offer testimony or cross examine any witnesses. The Technical Secretary shall subpoena such witnesses as the respondent may reasonably designate and shall require the production of such written evidence as reasonably relates to the matter under investigation. The Commission shall be controlled by the rules of evidence in effect in the district courts at the time of such hearing (§ 2208(C)).
- (4) Upon due consideration of the record or upon respondent's default in appearing, the Commission shall issue its determination or final order approved, in writing, by at least four members and shall immediately notify the respondent thereof by registered mail (§ 2208(D)).
- (5) Upon failure of the Commission to enter a final order or determination within six (60) days after final argument, the respondent shall be entitled to treat for all purposes such failure to act as a finding favorable to the respondent (§ 2212(A)).

- (6) In all proceedings with respect to alleged violations, the burden of proof shall be on the Technical Secretary (§ 2208(D)).

D. Variances

- (1) Variances, for periods of up to one year, may be granted by the Commission if it is determined that strict compliance with a provision or Commission order will result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business or activity and is without corresponding public benefit. In determining the conditions and extent of variance, the Commission shall recognize the progress made in eliminating air pollution, considering the reasonableness of conditioning the variance upon partial abatement over an estimated reasonable period or of conditioning it upon other requirements. Any variance may be conditioned upon periodic reports on the progress of compliance (§ 2211(A), (B), and (C)).
- (2) A person seeking a variance shall petition the Technical Secretary to that effect. The Secretary shall investigate such petition and recommend action on it to the Commission. If the recommendation is favorable, the Commission may grant the variance without hearing; if it is not favorable, or if the Commission determines that a hearing would be desirable, a hearing similar to that specified in the section on enforcement, above, shall be held, but the burden of proof shall be on the petitioner (§ 2211(D)).
- (3) Upon failure of the Technical Secretary to take action within sixty (60) days after receipt of a petition for variance, the person affected shall be entitled to treat for all purposes such failure to act as a grant of the variance (§ 2212(A)).

E. Confidential Information

Any information relating to secret processes or methods of manufacture or production obtained by the Technical Secretary in the administration of the law shall be kept confidential (§ 2210).

VI. FEES

No fees shall be charged by the Technical Secretary or the Commission for the performance of any of their respective functions (§ 2212(B)).

Louisiana -- Continued

VII. JUDICIAL REVIEW

- A. All orders or determinations of the Commission shall be subject to judicial review by the District Court of any judicial district where the property affected by the order or determination is located in whole or in part or in the District Court of the judicial district in which the Commission has its domicile (§ 2213).
- B. The record made before the Commission shall be admissible in evidence, but either the petitioner or the Commission may introduce additional evidence (§ 2213).

VIII. INJUNCTIVE RELIEF AND PENALTIES

- A. In the event the Commission shall determine that any order made by it and not then the subject of judicial review is being violated, the Commission may institute a civil action in the District Court for any parish in which the violation occurs for injunctive relief to prevent further violation of such order, or
- B. For the assessment of such penalty not to exceed \$50 per day for each day such violation continues as the court may deem proper (§ 2214).
- C. It shall be the duty of the Attorney General to bring such action, at the request of the Commission, in the name of the State (§ 2214).

IX. SCOPE AND CONSTRUCTION

- A. The basis for proceedings or other actions that shall result from violations of any rule or regulation which shall be promulgated by the Commission shall inure solely to the benefit of the people of the State generally. It is not intended to create in any way new rights or to enlarge existing rights or to abrogate existing private rights (§ 2215).
- B. This law shall be the exclusive means within the State for the control of air pollution (§ 2216).
- C. Nothing in the law shall be construed to prevent private actions to abate nuisances (§ 2216).

Louisiana -- Continued

D. If any part of the law shall be adjudged unconstitutional, such adjudication shall not affect the validity of the law as a whole or of any part not adjudged unconstitutional (Sec. 16). Act 259, Laws 1964 (This Sec. not codified).

X. EFFECTIVE DATE

Approved July 12, 1964.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Maine 1/

"The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or to the public . . . (are) declared to be public nuisance(s)" (Ch. 141, sec. 6).

"The local health officers shall receive and examine into the nature of complaints made by any of the inhabitants concerning nuisances dangerous to life and health within the limits of his jurisdiction and enter the premises where the conditions dangerous to health and life are known or believed to exist, and personally, or by appointed agents, inspect and examine the same; and all owners, agents and occupants shall permit such sanitary examinations; and every such health officer shall order the suppression and removal of nuisances and conditions detrimental to life and health found to exist within the limits of his jurisdiction." (Ch. 25, sec. 48).

The Maine legislature has directed the departments of forestry, inland fisheries and game, sea and shore fisheries, and the aeronautics commission as to, inter alia, the protection, if necessary, of the airspace from pollution, to initiate and to pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear, source, by-product, and radioactive materials, and from the operation in Maine of production or utilization facilities, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate (C. 52-A, § 4. VII).

In 1967, the Water Improvement Commission was renamed the Water and Air Environmental Improvement Commission. The 1967 Law authorized the Commission to accept Federal funds for air pollution studies and control (R.S., T. 38 § 362), and authorized the Commission to conduct studies and report recommendations for future action. The Commission is empowered to provide technical assistance to industries and local political subdivisions. (R.S., T. 38 § 460).

1/ Citations refer to Revised Statutes of Maine (1954).

Persons engaged in operations which may result in or contribute to air pollution shall supply available information about pollution but they need not disclose trade secrets. (R.S., T. 38 § 462).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Maryland 1/

1. Air Quality Control

I. POLICY STATEMENT

The Air Quality Control law declares the State policy of maintaining that degree of purity of the air resources which will protect the health, general welfare and property of the people (§ 690). The Act provides for an Air Quality Control Advisory Council, emission and ambient air quality standards, air pollution areas, air pollution monitoring and enforcement activities, air pollution emergency declarations, and penalties for violations.

II. DEFINITIONS

"Air pollution" means the presence in the outdoor atmosphere of substances in quantities, having characteristics and being of a duration which, from any single source or in combination with other sources, are, or may be predicted with reasonable certainty to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the proper enjoyment of the property of others by reason of the emission of odors, solids, vapors, liquids or gases. (§ 691(a)).

"Person" means any individual, group of individuals, firm, partnership, voluntary association, or private, public or municipal corporation, or political subdivision of the State, responsible for the use of property. (§ 691(e)).

III. ADMINISTRATIVE ORGANIZATION

The Department of Health shall assume responsibility for the jurisdiction over all emissions into the air and ambient air quality of the State. (§ 690(b)). The Governor shall appoint and maintain an Air Quality Control Advisory Council comprised of not more than 11 members (§ 695). Six separate air quality control areas are created; the State Board of Health and Mental Hygiene may alter these areas. (§ 693(a)).

1/ Chapter 143, Laws 1967, New Sections 690 through 704, of Article 43 of Annotated Code of Maryland.

IV. STANDARDS

The Department shall prepare and submit to the Board of Health and Mental Hygiene for approval not later than June 1, 1968, regulations establishing standards for emissions into the air and the ambient air quality for each area. Enforcement of the standards shall be carried out by the Department. (§ 693(b)).

V. EMERGENCY PROCEDURE

The Department shall prepare and submit to the Board for approval regulations establishing standards and procedures to be followed whenever pollution of the air reaches an emergency condition. In such cases, the Commissioner of Health shall advise the Governor that such a condition exists or is predicted. The Governor is authorized to issue an order proclaiming an emergency, and subject to such order, to require immediate elimination of specifically identifiable sources of pollution. In the event of any violation of such order, the attorney general is authorized to enforce compliance with the order in a court of appropriate jurisdiction. (§ 696).

VI. POWERS OF THE BOARD

- (1) Adopt, amend, and repeal, after publication of notice in newspapers and public hearing, rules and regulations for the control of air pollution; (§ 697(a)).
- (2) Issue orders as provided for variances or abatement. (§ 697(d) and § 698(b)).

VII. HEARINGS

Whenever the State Department of Health shall determine that a person has not complied with any rule or regulation promulgated by the State Board of Health and Mental Hygiene, it shall give notice to such person specifying the violation. This notice shall require that correction be made within a reasonable period of time or that the person complained against appear before the Department to answer the charges. (§ 698(a)).

Maryland -- Continued

On the basis of the evidence produced at the hearing, the Department may recommend to the Board that it grant an exception, or may enter an order directing such person to secure such operating results as are necessary to comply with the relevant Board rule or regulation or a variance may be allowed (§ 698(b)).

The Commissioner of Health is authorized to subpoena and compel the attendance of witnesses and shall require the production for examination of required records relating to any matter involved in the hearing. (§ 698(c)).

Information relating to secret processes or methods of manufacture or production need not be disclosed at a public hearing, and any such information discovered shall be kept confidential. (§ 698(d)).

VIII. PRIVATE RIGHTS

No private persons acquire actionable rights by virtue of the Act and Board determinations that air pollution exists are not to constitute a legal presumption or finding of fact to benefit such person.

IX. FINANCIAL ASSISTANCE

The Department is authorized to obtain such Federal or other funds as may be available. (§ 702).

X. VIOLATIONS; PENALTIES

Fines of up to \$1000 may be imposed for violations of standards, rules, or regulations with each day that the violation occurs constituting a separate violation. A person is not in violation of the Act if he is acting in accord with a compliance plan which plan was approved by the Board upon recommendation of the Department. (§ 703(a)).

Prosecution pursuant to the Act are only authorized upon a written order of the Commissioner of Health. (§ 703(b)).

XI. EFFECTIVE DATE

June 1, 1967.

2. Maryland Environmental Trust 1/

In 1967, "The Maryland Environmental Trust" was created to encourage and conduct programs of research and education pertaining to environmental, aesthetic, natural, health and welfare, scenic, or cultural qualities.

1/ Chapter 648, Laws 1967 adding new Sections 181-L through 181-X to Article 41, Annotated Code of Maryland

3. Cecil County 2/

Chapter 255, Laws 1967 authorizes the Cecil County Commissioners to adopt rules and regulations for the control of air pollution, to provide for the appointment of enforcement inspectors, and to provide penalties for violations.

Any such county ordinances or resolutions are to be proceeded by newspaper advertisements of the proposals and an opportunity for protests or objections to be heard.

2/ Section 11B of Article 25 of Annotated Code of Maryland

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Massachusetts 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

Under the 1954 air pollution control act the Massachusetts State Department of Health is charged with advising municipal authorities in regard to atmospheric pollution. Subject to the approval of the State Department of Health, the local board of health or other municipal legal authority authorized to control atmospheric pollution may adopt and enforce reasonable rules and regulations for the control of such pollution. The pollution to be controlled includes but is not limited to the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within the bounds of the municipality and which constitutes a nuisance or danger to the public health, or impairs the public comfort and convenience. (§ 31C).

II. ADMINISTRATIVE ORGANIZATION

A. A board of health or other legal authority constituted for such purpose by vote of the town or city council has jurisdiction to adopt and enforce rules and regulations to control atmospheric pollution subject to the approval of the State Department of Health (§ 31C).

B. The State Department of Health may adopt and amend regulations to prevent pollution or contamination of the atmosphere (§ 142A).

C. Powers and Duties

(1) Of the local control body

a. To adopt and enforce reasonable rules and regulations;

b. After notice, to hold a public hearing before adoption of rules and regulations. (§ 31C)

1/ Citations refer to Annotated Laws of Massachusetts C. 111 and 1966 Cumulative Supplement.

(2) Of the State Department of Health

- a. To adopt and amend rules and regulations to prevent pollution or contamination of the atmosphere (§ 142A).
- b. To approve rules and regulations promulgated by local control bodies (§ 31C).
- c. To advise local control bodies in all matters of atmospheric pollution (§ 31C).
- d. Upon request of a local control body and after a hearing of all interested parties, to assume joint jurisdiction to regulate or control the cause of atmospheric pollution arising in another town (§ 31C).

III. VIOLATIONS AND PENALTIES

- A. The supreme judicial or superior court may enforce the regulations established by the State Department of Health and restrain the use or occupation of premises until the regulations have been complied with (§ 142A).
- B. Any municipality, corporation or person which, after due notice, continues to violate any regulation regarding atmospheric pollution established by the State Department of Health is deemed guilty of a misdemeanor and upon conviction is subject to a fine of not less than \$10 nor more than \$50 for the first offense and not less than \$20 nor more than \$100 for every succeeding offense (§ 142A).
- C. Violation of any order, rule or regulation promulgated by a local control body under the provisions of this Act is punishable by a fine of not less than \$50 nor more than \$100 for the first offense. Each day or part thereof of violation constitutes a separate and succeeding offense (§ 31C).

2. Air Pollution Control Districts

I. GENERAL STATEMENT

In 1960 the metropolitan air pollution control district, embracing Boston and vicinity, was established and provision was made for the forming of other districts on joint application of two or more contiguous political subdivisions. Air pollution in each district is controlled by the State Department of Health pursuant to regulations adopted for that purpose. The State is reimbursed by the subdivision in each district for expenditures made for control activities in it (§§ 142B), (142C).

II. ADMINISTRATIVE ORGANIZATIONS

A. Formation of Air Pollution Control Districts

- (1) By Acts of 1960, c. 676, a metropolitan air pollution control district, consisting of Boston and contiguous towns, was established. Upon application, additional contiguous cities and towns may be admitted to this district by State Department of Health (§ 142B).
- (2) Air pollution control districts are formed by two or more contiguous political subdivisions upon joint application to and approval by the State Department of Health (§ 142C).

B. Control of Air Pollution Within Districts

The State Department of Health is charged with the control of the pollution of atmosphere within air pollution control districts. (§ 142B)

C. Powers and Duties of the State Department of Health

- (1) After public hearing, to promulgate, amend, or repeal rules and regulations.
- (2) To enter and inspect any property and stop and detain for inspection any motor vehicle in order to investigate any actual or suspected source of air pollution or ascertain compliance with any regulation. Trade secrets learned in the course of an inspection must be kept confidential upon request.

- (3) To order cessation or abatement of any violation of its regulations adopted pursuant to either § 142A or § 142B.
- (4) To maintain air sampling stations and devices, make or perform routine and special examinations, inspections, observations, determinations, laboratory analyses, and surveys, maintain records, and perform any other acts it deems necessary (§ 142B).

D. Financing

The State is reimbursed for all expenditures for each district by the subdivisions of that district through local assessments based one-half on local assessed valuations and one-half on local population (§ 142B).

III. VIOLATIONS AND PENALTIES

Failure to comply with any order of the State Department of Health to stop or abate violation of any of its air pollution regulations is punishable by a fine of not less than 10 nor more than 50 dollars for each offense. Each day of violation constitutes a separate offense. (§ 142B)

IV. RESTRAINT OF VIOLATIONS

Orders to stop or abate violation of any air pollution regulation of the State Department of Health may be enforced on petition of that department to the Superior Court, which has jurisdiction to restrain violations. (§ 142B)

V. SCOPE AND CONSTRUCTION

- A. § 142B does not abrogate any of the powers or duties of any agency or political subdivision of the State.
- B. Nothing in § 142B or any regulation adopted thereunder relieves a person from responsibility or liability for any damages which may occur or for civil or criminal proceedings arising out of or as a result of any action of that person, regardless of any action of the State Department of Health, and persons other than that department do not acquire actionable rights by virtue of such action.

VI. REPEALED

Section 4 of Acts of 1960, c. 676, repealed effective October 3, 1961, the laws relating to local smoke control regulation in Springfield (Acts of 1900, c. 236), Worcester (Acts of 1921, c. 37), and North Adams (Acts of 1941, c. 526).

3. Tax Exemption for Pollution Control Devices

Any equipment, facility or device installed on or attached to real property for the purpose of abating or preventing air or water pollution is exempt from taxation (Annotated Laws of Mass. Chap. 59, Sec. 5, Clause 39).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Michigan 1/

1. Air Pollution Act

I. GENERAL STATEMENT

The Act creates a nine member Air Pollution Control Commission within the State Department of Health. The Commission is empowered to promulgate rules and regulations, issue orders, make inspections, and institute enforcement actions. The law provides for judicial review and penalties.

II. DEFINITIONS

- A. "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor or any combination thereof. (§ 14.58(2)) (Reenacted without change by Public Acts 1966, No. 95).
- B. "Air pollution" means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics and under conditions and circumstances and of a duration which are injurious to human life or property or which unreasonably interfere with the enjoyment of life and property, and which are reasonably detrimental to plant and animal life in this State and excludes all aspects of employer-employee relationships as to health and safety hazards. With respect to motor vehicles, nothing in this Act or in the rules and regulations promulgated under the authority of this Act shall be inconsistent with the Federal regulations, emission limits, standards or requirements on motor vehicles. (Supra.)
- C. "Air cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants discharged into the atmosphere. (Supra.)

1/ Citations to Michigan Statutes Annotated, 1965 Cum. Suppl., as amended by Public Act No. 97, Laws 1967.

III. AIR POLLUTION CONTROL COMMISSION

A. Composition and Organization

The Commission created within the State Department of Health has nine members. The three public members are the Commissioner of Health (Chairman), the Director of Conservation, and the Director of Agriculture. State officer members may designate deputies to serve in their places. The six citizen members, who serve staggered three year terms, are: two representatives of industrial management, one of whom shall be a registered professional engineer trained and experienced in air pollution measurement and control; two representatives of local governing bodies, one of whom shall be a full time air pollution control officer; two representatives of the general public, one of whom shall be a licensed doctor of medical experience and competent in the toxicology of air contaminants. (§ 14.58(3) as amended, § 1 Act, No. 95, Public Acts of 1966.

Members receive expenses, but no salary.

Six members of the Commission constitute a quorum. (§ 14.58(4)).

B. Powers and Duties:

The Commission may:

- (1) Promulgate rules and regulations for air pollution control.
- (2) Compel attendance of witnesses at proceedings of the Commission.
- (3) Make, modify or cancel orders.
- (4) Institute court proceedings to compel compliance with the law.

- (5) Require submission For approval plans of air cleaning devices and inspect the installation for compliance with the plans.
- (6) Enter and inspect any property at reasonable times and places pursuant to reasonable notice.
- (7) Conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention.
- (8) Serve as the agency of the State for the receipt of moneys from the Federal government or other public or private agencies.
- (9) Encourage and provide technical assistance for local communities air pollution control programs.
- (10) Conduct programs of air pollution control education. (§ 14.58(5)).

IV. PROCEDURE

A. Hearings

- (1) Public hearings may be held before any member of the Commission or their designated delegates or representatives. Persons designated to conduct the hearing are referees and must be disinterested persons and technically qualified. (§ 14.58(11)(1)).
- (2) Interested parties, their attorneys, and the referee shall have the right to examine and cross-examine witnesses. (§ 14.58(11)(3)).
- (3) The record made in the hearing before the referee shall be submitted to and reviewed by the Commission and a hearing held thereon. (§ 14.58(12)).

B. Rules and Regulations

- (1) A rule or regulation requires a vote of approval in writing of not less than 6 members of the Commission. (§ 14.58(7)(1)).
- (2) A public hearing shall be held before rules and regulations are adopted. Such hearing must be in accordance with provisions of the State administrative procedure law.
- (3) Any rule or regulation may differ in its terms and provisions as between particular types, characteristics, quantities and conditions and circumstances of air pollution and the duration; as between particular air pollution sources; and as between particular areas of the State. (§ 14.58(7)(3)).

C. Enforcement

- (1) The Commission shall investigate complaints and suspected violations. Where a violation is found, the Commission shall endeavor to the fullest extent possible to effect compliance by conference, conciliation and persuasion. (§ 14.58(8)).
- (2) In case of failure to correct violations by conference, conciliation and persuasion, the Commission shall issue and serve upon the alleged violator a written notice, together with a copy of the complaint, specifying the violation, and shall require the alleged violator to answer the complaint at a public hearing. (§ 14.58(9)).
- (3) The respondent to the complaint may file a written answer and appear at the hearing in person or by representative, with or without counsel, and submit testimony, or do both. At the request of the respondent, the Commission shall subpoena such witnesses as the respondent may reasonably designate and require the production for examination of any book or paper relating to the matter under investigation at a hearing. (§ 14.58(10)(1)(2)).

- (4) Testimony taken at a hearing shall be under oath and recorded. (§ 14.58(10) (3)).
- (5) Where the Commission concludes that the record substantiates a violation, the Commission shall make a final determination containing a statement of the violation found to exist and shall order correction within a reasonable time. (§ 14.58(13)).

D. Emergency Powers

When the Commissioner of Health finds that any person is discharging or causing to be discharged into the atmosphere directly or indirectly any air contaminant constituting an immediate and serious danger to the health of the people and it appears prejudicial to the interests of the people to delay action, the Commissioner of Health shall notify the person by written notice that he must discontinue immediately the air pollution. (§ 14.58(14)).

E. Variances

- (1) The Commission shall grant a variance to any person who shows that compliance would constitute an undue hardship and would be out of proportion to the benefits to be obtained. A variance shall not be granted where the person seeking the variance is causing air pollution which is injurious to public health. Any variance granted shall not be construed as relief from liability to the Commission or for the maintenance of a nuisance. (§ 14.58(19 and 21)).
- (2) Variances shall be granted for a period not exceeding one year but may be continued from year to year. (§ 14.58(22)).

F. Confidential Information

Any information relating to secret processes, or methods of manufacture, or production obtained in the course of any inspection, investigation, hearing, or report shall be kept confidential. (§ 14.58(5(1), 11(4), 11(7), 15)).

V. LOCAL POWERS

- A. Nothing in the State law shall be deemed to invalidate existing local laws or prevent any political subdivision from adopting laws having requirements equal to or greater than the minimum applicable requirements of State law. (§ 14.58(26)(1)).
- B. When a political subdivision or enforcing official thereof fails to enforce properly the local laws which afford protection to the public equal to that provided by State law, the Commission, after consultation with the local official or governing body, may take such appropriate action as may be necessary to enforce applicable provisions of the State law. (§ 14.58(26)(2)).

VI. JUDICIAL REVIEW

Final orders or determinations of the Commission may be reviewed de novo in the Circuit Court for the County of Ingham in chancery, or for the county in which the alleged violator resides, or for the county in which the alleged violation occurred. In such de novo review, the Commission shall have the burden of proving the correctness of its order or determination. (§ 14.58(13)).

VII. INJUNCTIVE RELIEF AND PENALTIES

- A. The Commission may bring any appropriate action, at law or in chancery, as may be necessary to carry out and enforce the law. (§ 14.58(17)).
- B. Any person who is found to have violated the law shall be liable for a penalty not to exceed the sum of \$500 and an additional penalty of not to exceed \$100 for each day of violation, commencing on the first day after expiration of the time fixed by the Commission for taking corrective measures. (§ 14.58(18)(11)).

VIII. SCOPE AND CONSTRUCTION

- A. The civil liabilities imposed upon person violating the law shall not include any violation caused by an act of God, war, strike, riot, catastrophe or other condition as to which negligence or willful misconduct on the part of such person is not the proximate cause. (§ 14.58(18)).

- B. The purpose of the law is to provide additional and cumulative remedies to prevent and abate air pollution. Nothing in the law shall abridge or alter rights of action or remedies now or hereafter existing nor be construed as stopping individuals, counties, cities, townships or villages or other governmental units from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution. (§ 14.58(24)).
- C. The law does not repeal any laws relating to air pollution which are not expressly repealed. (§ 14.58(25)).
- D. The final order or determination of the Commission shall not be used in evidence of presumptive air pollution in any suit filed by any person other than the Commission. (§ 14.58(25)).

IX. EFFECTIVE DATE

The Act is ordered to take immediate effect. Approved
July 23, 1965,

Michigan -- Continued

- (1) The certificate was obtained by fraud or misrepresentation.
 - (2) The holder has failed substantially to proceed with construction, installation or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification.
 - (3) The facility is no longer used for the primary purpose of pollution control. (§ 7.793(6)(1)(a) through (c)).
- F. A party aggrieved by the issuance or refusal to issue, revocation or modification of a certificate may appeal the finding or order of the tax commission as provided by law. (§ 7.793(7)).
- G. The tax commission may adopt such rules and regulations as necessary to administer the law. (§ 7.793(8)).

III. EXEMPTION

- A. For the period subsequent to the effective date of the certificate and continuing so long as the certificate is in force, a facility is exempt from real and personal property taxes and from sales and use taxes for tangible personal property which becomes affixed and made a structural part of the real estate of such facility. The industrial processing exemptions under the sales tax act (No. 167, Public Acts of 1933) and the use tax act (No. 94, Public Acts of 1937) are not affected by these provisions. (§ 7.793(4)(1) through (3)).
- B. The certificate shall state the total acquisition cost of the facility entitled to exemption. (§ 7.793(4)(4) as amended by Act No. 270, Public Acts of 1966).

IV. SCOPE AND CONSTRUCTION

- A. Tax exemption shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by the facility. (§ 7.793(2)(2)).

Michigan -- Continued

- B. The effective date of a certificate shall be the date of issue of the certificate. (§ 7.793(3)).
- C. When a certificate is revoked because obtained by fraud or misrepresentation, all taxes which would have been payable shall be immediately due and payable with interest and penalties. No statute of limitation shall operate in event of fraud or misrepresentation. (§ 7.793(6)(2)).

V. EFFECTIVE DATE

 This law is ordered to take immediate effect. Approval
July 21, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Minnesota 1/

1. Minnesota Pollution Control Agency

I. DEFINITIONS

"Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance differing in composition from or exceeding in concentration of natural components of the atmosphere. (§ 6(2)).

"Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (§ 6(3)).

"Emission" means a release or discharge into the outdoor atmosphere of any air contaminant or combination thereof. (§ 6(4)).

"Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, and receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the pollution control agency. (§ 6(8)).

II. ADMINISTRATIVE ORGANIZATION

Creates the Minnesota Pollution Control Agency, to be headed by a Director. The Agency shall consist of seven members appointed by the Governor, by and with the advice and consent of the Senate. The Agency is the successor of the Water Pollution Commission, and all powers and duties vested in or imposed upon the Commission are transferred to, imposed upon, and vested in the Minnesota Pollution Control Agency. (§ 2(4)). Members receive \$35 per day for their services (§ 2(5)).

1/ Citations refer to Chapter 882, Laws 1967.

III. THE DIRECTOR

The Director of the Pollution Control Agency is appointed by the Governor for a four year term. His powers are to:

- (1) Organize the Agency and employ necessary personnel;
- (2) To contract with persons, firms, corporations, the Federal government, or the University of Minnesota for doing any of the work of his office; and
- (3) Apply for, receive, and disburse Federal funds made available to the State. (§ 3).
- (4) The Director is the Chief Executive Officer of the Pollution Control Agency. (§ 4).

IV. COOPERATION

Directs all State departments and agencies to cooperate with the Agency and its Director and assist them in the performance of their duties, and authorizes the Agency to cooperate with other departments and agencies of the State, municipalities other States, the Federal government, in the public interest and in order to control pollution. (§ 5).

V. POWERS AND DUTIES OF THE AGENCY

- (1) Adopt regional standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles. (§ 7(2)).
- (2) Adopt, amend, and rescind rules governing its administration and procedure and its staff and employees; (§ 7(3)).
- (3) Adopt, amend, and rescind regulations and standards having the force of law relating to any purpose within the provisions of this act for the prevention, abatement, or control of air pollution; (§ 7(4)); and
- (4) Grant variances. (§ 7(5)).

VI. ENFORCEMENT

It shall be the duty of every person affected to comply with the provisions of this act and with the provisions of every regulation or standard of the Agency relating thereto. Violation of any such provision shall be a misdemeanor, punishable by a fine of not exceeding \$100 or imprisonment for not exceeding 90 days. Each day of any such violation shall constitute a separate offense.

The provisions of law, regulations, or standards specified herein may be enforced by injunction, action to compel performance, or other appropriate action. (§ 8).

VII. STUDY AND REPORT

The Agency shall investigate and study problems relating to air pollution and report to the Governor and the Legislature on or before February 15, 1969. The recommendations of the Agency may include a comprehensive plan for the control, abatement or prevention of air pollution.

The Agency shall study and investigate problems of solid waste control and problems concerning the uses of land affected by air and water pollution, and report to the Governor and the Legislature in regard thereof not later than February 15, 1969. The Recommendations of the Agency may include a comprehensive plan covering the standards of land use in places where such land use increases the problem of pollution. (§ 9).

2. Local Programs 1/

The council or other governing body of each city in the State which now has or hereafter may have 20,000 and not more than 50,000 inhabitants is authorized to enact and provide penalties for the violation of ordinances to regulate the emission of dense smoke in the city.(§ 461.07).

Such ordinances may define the meaning of dense smoke and declare the emission thereof to be a public nuisance and provide effective steps for its abatement.(§ 461.08).

Any city of the third class in the State is authorized, acting through its council, to regulate the emission of dense smoke from the smokestack of any locomotive, engine, stationary engine, or building within the limits of such city and to declare such emission of dense smoke to be a public nuisance and to provide for its summary abatement and in addition may impose a penalty not to exceed a fine of \$700 or 90 days imprisonment. (§ 461.09).

In 1957, § 144.12 was amended so as to authorize the State board of health to make regulations regarding atmospheric pollution which may be injurious or detrimental to public health. Such regulations have the force of law except insofar as they conflict with any statute or with the charter or ordinance of a city of the first class upon the subject. The board may require the taking out of licenses or permits to achieve its purpose of regulation. This statute became effective April 11, 1965. (§ 144.12 (14)).

1/ Citations refer to Minnesota Statutes Annotated.

3. Tax Exemptions 1/

Exempts from taxation real and personal property constructed or installed after June 2, 1967, used solely and exclusively for the abatement and control of air pollution.

Any taxpayer requesting exemption on a facility, or part of a facility, shall file an application with the Commissioner of Taxation. The Commissioner may request the advice of any commission or agency having knowledge of pollution control, or authority to implement pollution control programs. If the Commissioner determines that property qualifies for exemption, he shall issue an order exempting such property from taxation. Any assessor shall exempt such property from taxation as long as it is used solely for abatement of air pollution. (§ 272.02).

1/ Citations refer to Minnesota Statutes 1965, as enacted by Chapter 32, Laws 1967.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Mississippi 1/

1. Air Pollution Control

I. POLICY STATEMENT

The Air and Water Pollution Control Act establishes a State air and water pollution control commission; to authorize the control, prevention and abatement of pollution of the air and the surface and underground waters of the State of Mississippi; to designate the membership of this commission; to provide for its duties, powers, and responsibilities; and for related purposes.

It is declared to be the public policy of this State to conserve the air and waters of the State and to protect, maintain and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial recreational and other legitimate beneficial uses; to maintain such a reasonable degree of quality of the air resources of the State to protect the health, general welfare and physical property of the people, and to provide for the prevention, abatement and control of new or existing air pollution; and to cooperate with other agencies of the State, agencies of other states, and the Federal Government in carrying out these objectives.

II. DEFINITIONS

"Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor of any combination thereof produced by processes other than natural.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property or which unreasonably interfere with enjoyment of life or use of property, throughout the State or throughout such area of the State as shall be affected thereby.

1/ Senate Bill No. 1955, approved May 31, 1966.

"Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

"Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants discharged into the atmosphere. (Sec. 2(2)).

"Person" means the State or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation. (Sec. 2(3)(b)).

III. ADMINISTRATIVE ORGANIZATION

There is created the Mississippi Air and Water Pollution Control Commission, composed of the following members: the Director of the Division of Sanitary Engineering of the State Board of Health; the Director of the State Game and Fish Commission; the Water Engineer of the State Board of Water Commissioner; the Supervisor of the State Oil and Gas Board; the Director of the State Plant Board; the Executive Secretary of the State Marine Conservation Commission; and four (4) members to be appointed by the Governor, with the advice and consent of the Senate, one (1) of whom shall represent municipalities and shall be an elected official of a municipality of the State; two (2) of whom shall represent industry but shall not come from the same basic industry; and one (1) of whom shall be appointed by the Governor from a list of the names of ten (10) persons to be submitted by the Mississippi Wildlife Federation. The term of office of the appointed members shall be six (6) years. (Sec. 3(a)).

There are also to be the following associate members of the Commission, who shall have the right to meet with the Commission at any time and shall be subject to the call of the Commission at all times, and who shall have the right of full discussion in matters pending before the Commission, but who shall have no vote: the Director of the Agricultural and Industrial Board; the State Geologist; the Director of State Parks. (Sec. 3(b)).

Each State agency member or associate member may designate a representative of his department to perform his duties as a member of the Pollution Control Commission. (Sec. 3(c)).

State agency members and associate members of the Commission receive no additional salary for their services as members. Other members are to receive twenty dollars (\$20) per day. (Sec. 3(d)).

The Commission is to meet monthly and may hold special meetings at the call of the Chairman. (Sec. 4).

The Commission shall appoint an Executive Secretary to exercise administrative supervision over its programs. (Sec. 5(a)).

IV. POWERS AND DUTIES

- (1) General supervision of the administration and enforcement of this act and all rules and regulations and orders promulgated thereunder;
- (2) To develop comprehensive programs for the prevention, control and abatement of new or existing air pollution;
- (3) To advise, consult, contract and cooperate with other agencies of the State, the Federal Government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this act;
- (4) To accept and administer loans and grants from the Federal Government, and from other sources, public or private;
- (5) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air pollution and causes, prevention, control and abatement and supervision;
- (6) To collect and disseminate information relating to air quality and pollution and the prevention, control, supervision and abatement thereof;
- (7) To adopt, modify, or repeal and promulgate standards of quality of the air of the State for the prevention, control and abatement of pollution;

- (8) To adopt, modify, repeal, and promulgate, after due notice and hearing, and to enforce rules and regulations implementing or effectuating the powers and duties of the Commission;
- (9) To issue, modify, or revoke orders (1) prohibiting, controlling or abating discharges of contaminants and wastes into the air of the State; (2) requiring the construction of air cleaning devices, or the adoption of other remedial measures to prevent, control or abate air pollution;
- (10) To hold such hearings, to issue notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer oaths, and to take testimony;
- (11) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, or air cleaning devices in connection with the issuance of such permits or approval as are required by this act;
- (12) To issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the discharge of contaminants and wastes into the air of the State, for the installation, modification or operation of air cleaning devices;
- (13) To require proper maintenance and operation of air cleaning devices;
- (14) To exercise all incidental powers necessary to carry out the purposes of this act;
- (15) The Commission lacks the authority to regulate air conditions existing solely within commercial and industrial installations or to affect employer-employee relations. (Sec. 6).

V. CONFIDENTIAL INFORMATION

Any information relating to confidential processes, devices, or methods of manufacture or production obtained by the Commission or its employees in the administration of this act shall be kept confidential. Anyone violating this section shall be liable in a civil action for damages arising therefrom and shall also be guilty of a misdemeanor. (Sec. 7).

VI. PROHIBITIONS; PERMITS REQUIRED

It shall be unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless he holds a permit from the Commission. The Commission may revoke or modify any permit or deny any permit when it is necessary in the opinion of the Commission to prevent, control or abate air pollution. A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule or regulation requiring a permit, if proper application is made therefor, and no such permit shall be modified or revoked without prior notice and hearing as herein provided. Any person who is denied a permit by the Commission or who has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application. The Commission may require the submission of plans, specifications, and other information. (Sec. 8(a)).

VII. PROCEDURE

Whenever the Commission has reason to believe that a violation of any provision of the act or regulation or of any order of the Commission has occurred, it may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provisions of the act or regulation or order alleged to be violated, the facts alleged to constitute a violation thereof, and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the person or persons named therein request in writing a hearing before the Commission. In lieu of such order, the Commission may require that the alleged violator appear before the Commission at a time and place specified in the notice and answer the charges complained of. (Sec. 10(a)).

On the basis of the evidence produced at the hearing, the Commission shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of this and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing or made written request for notice of the order. (Sec. 10(b)).

Any person who is denied a permit by the Commission or who has such permit revoked or modified shall be afforded an opportunity for a hearing. On the basis of such hearing the Commission shall affirm, modify or revoke its previous determination. (Sec. 10(c)).

Except as otherwise expressly provided, any notice, or other instrument issued by or under authority of the Commission may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the Commission; or such service may be made by mailing a copy of the notice, order, or other instrument by registered mail, directed to the person affected at his last known post-office address as shown by the files or records of the Commission, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the Commission. (Sec. 10(d)),

VIII. HEARINGS

Hearings may be conducted by the Commission or by any member of the Commission acting in its behalf, or the Commission may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Commission at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the Commission, together with findings of fact and conclusions of law made by the Commission. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction upon application of the Commission or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof. (Sec. 11),

IX. INSPECTIONS AND INVESTIGATIONS

The Commission shall have the power to enter at reasonable times upon any private or public property, and the owner, managing agent or occupant of any such property shall permit such entry for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any air of the State. (Sec. 12(a)),

X. EMERGENCY RULES, REGULATIONS AND ORDERS

In the event an emergency is found to exist by the Commission which, in its judgment, requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the

same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than forty-five days from its effective date and in any event it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective. (Sec. 13).

XI. PENALTIES

Any person found guilty of violating any of the provisions of this act, or any written order of the Commission in pursuance thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than \$50.00, and not more than \$3,000.00 and cost of prosecution, or by imprisonment in the county jail not to exceed one year, or both such fine and imprisonment in the discretion of the court, and, in addition thereto, may be enjoined from continuing such violation by proper proceeding brought in the chancery court of the county in which venue may lie. Each day upon which a violation of the provisions of this act occurs shall be deemed a separate and additional violation for the purpose of this act. The circuit court of the county in which venue lies shall have original jurisdiction to enforce this act. (Sec. 17(a)).

XII. APPEALS

Any person or interested party aggrieved by a Commission order may petition the Commission for a hearing on the matter involved. After such hearing, appellate review of the Commission's order, on the record made before the Commission may be had in the Chancery Court as to all questions of law and fact. The Commission's order will be reversed by the Chancery Court if the court finds prejudicial error. (Sec. 18).

XIII. EFFECTIVE DATE

Effective July 1, 1966.

2. Local Programs 1/

"The governing authorities of municipalities have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property; to regulate or prohibit any mill, laundry, or manufacturing plant from so operating whereby the soot, cinders, or smoke therefrom . . . may do damage to or interference with the use or occupation of public or private property . . ."
(§ 3374-124).

"The governing authorities of municipalities have the power to . . . regulate and prescribe the construction and building of chimneys, smokestacks and smoke and hot-air flues" (§ 3374-150).

1/ Citations refer to Mississippi Code 1942 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Missouri 1/

1. Missouri Air Conservation Law

I. GENERAL STATEMENT

This law creates the Air Conservation Commission of the State of Missouri and empowers the Commission to adopt rules and regulations, hold hearings, enter orders and represent the State in negotiations of interstate compacts. Provision is made for an executive secretary, judicial review, enforcement by penalties and injunctions, and for local and regional air pollution control programs.

II. DEFINITIONS

- A. "Air contaminant" means any particulate matter or any gas or vapor or any combination thereof. (§ 203.020(2))
- B. "Air contaminant source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated. (§ 203.020(3))
- C. "Air pollution" means the presence in the ambient air of one or more air contaminants in quantities, of characteristics and of duration which directly and proximately cause or contribute to injury to human, plant, or animal life or health or to property or which unreasonably interfere with the enjoyment of life or use of property. (§ 203.020(4))
- D. "Person" means any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department or bureau of the State, or any legal entity whatever which is recognized by law as the subject of rights and duties. (§ 203.020(11))

III. AIR CONSERVATION COMMISSION OF THE STATE OF MISSOURI

A. Composition and Organization

The members of the Commission are the director of the Missouri division of health and six others to be appointed by the governor with the advice and consent of the senate. The

1/ Citations refer to Annotated Missouri Revised Statutes, 1966 Cumulative Supplement.

members must be so selected as to represent industry, labor, agriculture, municipal or county government and the general public no more than three of the appointed members may belong to the same political party. Terms are for three years with no limitation on number of terms. Four members constitute a quorum. The governor designates the chairman. (Sec. 203.040)

B. Powers and Duties

The Commission shall have the power or duty:

- (1) To adopt, promulgate, amend and repeal rules and regulations including regulation of use of equipment known to be a source of air contamination and establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source. (§ 203.050 - (1)(1))
- (2) To establish air quality standards. (§ 203.050(1)(2))
- (3) To require persons engaged in operations which result in air pollution to file reports containing information relating to rate, period of emission and composition of effluent. (§ 203.050(1)(3)(a))
- (4) To require submission of plans and specifications for approval. (§ 203.050(1)(3)(b))
- (5) To hold hearings. (§ 203.050(1)(4))
- (6) To enter orders to effectuate the purposes of the law. (§ 203.050(1)(5))
- (7) To cause institution of legal proceedings to compel compliance. (§ 203.050(1)(6))
- (8) To authorize any employee of the Commission to enter at all reasonable times and upon reasonable notice in or upon private or public property for the purpose of inspection. (§ 203.050(1)(8))
- (9) To settle or compromise any suit for recovery of a penalty or for compelling compliance with the provisions of any rule or regulation. (§ 203.050(1)(7))

- (10) To retain, employ, provide for, and compensate such employees as may be necessary to carry out the law. (§ 203.050(1)(9))
- (11) To secure necessary scientific, technical, administrative and operational services, including laboratory facilities. (§ 203.050(1)(10))
- (12) To represent the state in all matters pertaining to interstate air pollution including negotiation of compacts. (§ 203.050(2)(7))
- (13) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government. (§ 203.050(2)(8))

C. Jurisdictional Limitation

Nothing contained in the law shall be deemed to grant the Commission any jurisdiction or authority with respect to air pollution existing solely within commercial and industrial plants, works, or shops or to affect any aspect of employer-employee relationships as to health and safety hazards. (§ 203.050(3))

IV. EXECUTIVE SECRETARY

- A. The executive secretary shall be a full-time employee of the division of health and shall act as administrative agent to the Commission. (§ 203.060)

B. Powers and Duties

The executive secretary shall have the following powers and duties:

- (1) To investigate complaints, issue orders and file formal complaints before the Commission. (§ 203.060(3))
- (2) To receive and act upon reports, plans, and specifications provided for under the law. (§ 203.060(4))
- (3) To receive petitions for variances and certificates of exemptions. (§ 203.060(5))

V. PROCEDURE

A. Hearings

- (1) At any public hearing, all testimony shall be under oath and recorded stenographically.
- (2) A majority of the members conducting a hearing may issue notices of hearings and subpoenas. (§ 203.100(2))
- (3) All hearings shall be held before at least four members of the Commission. (§ 203.100(4))

B. Rules and Regulations

- (1) No standard, rule or regulation shall be adopted except after a public hearing to be held after thirty days prior notice by public advertisement of the date, time, and place of the hearing and opportunity given to the public to be heard. (§ 203.070(1))
- (2) Any standard, rule or regulation shall not be adopted until approved in writing by at least four members of the Commission. (§ 203.070(3))
- (3) Any standard, rule or regulation may differ in its terms as between particular types and conditions of air pollution or of air contamination, as between particular air contaminant sources, and as between particular areas of the state. (§ 203.070(4))

C. Enforcement

- (1) The executive secretary shall cause investigations to be made upon the request of the Commission or upon receipt of information concerning an alleged violation. If investigation discloses a violation, the executive secretary shall by conference, conciliation and persuasion, endeavor to eliminate the violation. (§ 208.080(1) and (2))

- (2) In case of failure by conference, conciliation and persuasion to correct a violation, the executive secretary may order abatement or file a formal complaint with the Commission requesting that the matter be set down for a hearing. Any person against whom the executive secretary issues an order may appeal the order and the appeal stays the enforcement of the order. (§ 203.080(3))
- (3) When a matter is scheduled for a hearing, the petitioner on appeal or respondent to a formal complaint may file written arguments and may appear at the hearing in person or by representative, with or without counsel, and may make oral argument, offer testimony or cross-examine witnesses. (§ 203.080(4))
- (4) After due consideration, the Commission shall enter a final order or determination and notify the petitioner or respondent in writing by certified or registered mail. (§ 203.080(6))
- (5) Any final order or determination of the Commission shall be approved by at least four members. (§ 203.080(7))

D. Emergency Provision

If the executive secretary finds that any lawful discharge of air contaminants creates an emergency endangering public health, safety, or welfare, the executive secretary, with written approval of the governor, shall order the discharge discontinued. (§ 203.090)

E. Variances

- (1) Variances, for such period and under such conditions specified by the Commission, may be granted by the Commission if it is determined that compliance will result in an arbitrary and unreasonable taking of property or in the practical closing of any lawful business without sufficient corresponding benefit to the people. (§ 203.110(1))
- (2) Any person seeking a variance shall do so by filing a petition with the executive secretary who shall investigate and make recommendation for disposition to the Commission. If the recommendation is against granting a variance, a hearing shall be held if requested. If the recommendation is favorable, the Commission may

grant the variance without hearing; except that upon petition of any person aggrieved, a hearing shall be held. In any such hearing the burden of proof shall be on the person seeking a variance. (§ 203.110(4))

F. Approval by Operation of Law

Upon the failure of the executive secretary to take action within 60 days after request for approval of plans and specifications, petition for variance or certificate of exemption or upon the failure of the Commission to enter a final order within 60 days after final argument in any hearing, the person seeking such action shall be entitled to treat such failure to act as a grant of the requested approval or a favorable finding in any hearing, as the case may be. (§ 203.120)

G. Confidential Information

- (1) No information relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise and all such information shall be kept confidential. (§ 203.100(5))
- (2) Any member of the Commission or employee thereof who is convicted of willful disclosure or conspiracy to disclose confidential information to any person other than one entitled to the information under the Act is guilty of a felony and shall forfeit his appointment. (§ 203.100(5)) and (§ 203.160(2))

VI. JUDICIAL REVIEW

All final orders or determinations of the Commission or the executive secretary shall be subject to judicial review. However, no judicial review shall be available unless and until all administrative remedies are exhausted. (§ 203.130)

VII. LOCAL POWERS

- A. Any political subdivision of the state is empowered to enact and enforce ordinances to control air pollution which are consistent with the state law. (§ 203.140(1))

B. Exemptions

- (1) Any political subdivision shall be exempt from the state law which provides for air pollution control by ordinance that complies with at least the minimum applicable requirements of state law. (§ 203.150(1))
- (2) The fact of such exemption shall be evidenced by a certificate of exemption issued by the Commission if it finds that a local law meets the requirements and is being enforced. (§ 203.150(2))
- (3) The laws of any political subdivision not applying for a certificate of exemption or which is denied a certificate of exemption are repealed. Provision is made for suspension and revocation of certificates of exemption where a local law is being enforced in a manner inconsistent with state law. (§ 203.150(3)) and (§ 203.150(4))

C. Local Cooperation

- (1) Any political subdivision may enter into and perform with other political subdivisions of the state such contracts and agreements as they deem proper for establishing, planning, operation, and financing of air pollution programs. (§ 203.140(2))
- (2) Such agreements may provide for an agency to supervise and operate on an air pollution program and may prescribe its powers and duties and fix the compensation of the agency's members and employees. (§ 203.140(2))
- (3) A county of the first class with a charter form of government is given exclusive power to control air pollution within its boundaries consistent with the State act, provided that, any municipality in such county may promulgate ordinances and resolutions for the control of air pollution not inconsistent with the act or with county ordinances. (§ 203.140(1))

VIII. INJUNCTIVE RELIEF AND PENALTIES

In the event the Commission determines that there is a violation, the Commission may cause to have instituted a civil action for injunctive relief or for a penalty not to exceed two hundred dollars per day. (§ 203.160(1))

IX. SCOPE AND CONSTRUCTION

- A. Existing civil or criminal remedies for any wrongful action which is a violation of any part of the law are not excluded by the act. (§ 203.170(1))
- B. Persons other than the state or the Commission do not acquire actionable rights by virtue of the act. (§ 203.170(2))
- C. The liabilities imposed for violation of the act are not imposed for any violation caused by an act of God, war, strike, riot or other catastrophe. (§ 203.160(3))
- D. Nothing in the law vests in the Commission any power with respect to the registration or licensing of any machine, equipment, device or other contrivance licensed by the state commission on atomic energy, the division of health, or the U. S. Atomic Energy Commission unless the use or operation thereof is a source of air contamination. (§ 203.180)
- E. If any section, subsection, sentence or clause of the act is adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, subsection, sentence or clause not adjudged unconstitutional. (§ 17)(Not codified)

X. EFFECTIVE DATE

Approved August 24, 1965, effective October 18, 1965.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Montana 1/

1. Clean Air Act

I. DECLARATION OF POLICY AND PURPOSE

It is hereby declared to be the public policy of the State and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the State and facilitate the enjoyment of the natural attractions of the State. (§ 2(1)).

It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality. (§ 2(2)).

To these ends it is the purpose of this act to provide for a coordinated Statewide program of air pollution prevention, abatement and control; for an appropriate distribution of responsibilities among the State and local units of government; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest. (§ 2(3)).

II. DEFINITIONS

"Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or conduct of business.

1/ Citations refer to Chapter 313, Laws 1967.

"Person" means any individual, partnership, firm, association municipality, public or private corporations, subdivision or agency of the State, trust, estate or any legal entity. (§ 3).

III. ADMINISTRATIVE ORGANIZATION

Designates the State Board of Health as the agency to have responsibility for the administration of this act. (§ 4).

Creates the Air Pollution Control Commission, to be composed of seven members as follows:

- a. The Executive Director of the State Board of Health;
- b. The Commissioner of Labor and Industry;
- c. The Commissioner of Agriculture;
- d. The Chief Executive and Administrative Officer of the State Aeronautics Commission;
- e. The Director, State Fish and Game Department;
- f. Two persons appointed by the Governor.

Creates an Air Pollution Control Advisory Council, to consist of thirteen members, appointed by the Governor, with the advice and consent of the Senate, as follows:

- a. A registered professional engineer;
- b. A licensed physician;
- c. An urban or regional planner
- d. A practicing veterinarian;
- e. One representative from each of the following:
 1. fuel industry;
 2. manufacturing components of industry;
 3. agriculture;

4. conservation; and
5. labor; and two persons representing county and municipal government.

Members, not State employees, are to receive \$20 per day. The Director of the Commission shall be Secretary of the Council. The Council may consider standards, rules, and regulations as provided herein and any other matter related to the purposes of this act, which may be submitted to it by the Commission. It may make recommendations to the Commission on its own initiative concerning the administration of this act. (§ 5).

IV. BOARD'S POWERS

In addition to any other powers conferred on it by law, the Board may:

- (1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act;
- (2) Hold hearings and compel the attendance of witnesses and the production of evidence at such;
- (3) Issue necessary orders to effectuate the purposes of this act and enforce such by appropriate administrative and judicial proceedings;
- (4) Require access to records relating to emissions;
- (5) Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities;
- (6) Prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution;
- (7) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act;
- (8) Encourage local units of government to handle air pollution problems and assist financially in the cost of local programs;

- (9) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, preventions, abatement, and control;
- (10) Determine by means of field studies and sampling the degree of air contamination and pollution in the State;
- (11) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto;
- (12) Establish ambient air quality standards;
- (13) Collect and disseminate information and conduct educational and training programs;
- (14) Advise, consult, contract, and cooperate with other agencies of the State, local governments, industries, other States, interstate and interlocal agencies, the United States, and any interested persons or groups;
- (15) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof;
- (16) Accept, receive, and administer grants or other funds or gifts for the purpose of carrying out any of the functions of this act. (§ 6).

V. CLASSIFICATION AND REPORTING

The Board may classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property, and may be applied to the State as a whole or to any designated area. (§ 7(1)).

Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the Board may require reporting shall make reports containing required information concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and any other matter relevant to air pollution available or capable of being assembled. (§ 7(2)).

VI. PERMITS

The Board may by rule or regulation, prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to air pollution, or which is intended primarily to prevent or control the emission of pollutants, unless a permit therefor has been obtained. (§ 8).

VII. INSPECTIONS

Permits any authorized officer, employee, or representative of the Board to enter and inspect any property, premises, or place, except a private residence, on or at which an air contaminant source is located or being constructed or installed for the purpose of ascertaining the State of compliance with this act and rules in force pursuant thereto. (§ 9).

VIII. PROHIBITIONS

The Board shall establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants necessary to prevent, abate or control air pollution. Emissions in excess of established levels shall be unlawful. (§ 10).

IX. ENFORCEMENT

Whenever the Board has reason to believe that a violation of this act or rule made pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. Orders issued to take corrective action shall become final unless, within 30 days from date, a hearing is requested before the Commission. (§ 11(1)).

If, after hearing, the Board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other action deemed appropriate. (§ 11(2)).

Montana -- Continued

In lieu of issuing the order provided for above, the Commission may:

- (1) Require the alleged violator or violators to appear before it for a hearing and answer the charges complained of; or
- (2) Initiate action under a local program. (§ 11(3)).

X. EMERGENCY PROCEDURE

If the Director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, he shall order persons causing or contributing to such to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the Director shall fix a place and time, within 24 hours, for a hearing to be held before the Commission. (§ 12(1)).

If the Director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person or persons responsible to reduce or discontinue emissions immediately, without regard for the enforcement provision. (§ 12(2)).

XI. VARIANCES

Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the Board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of discharges of pollutants. No exemption shall be granted except after public hearing and until the Commission has considered the relative interests of the applicant, other owners or property likely to be affected by the discharges, and the general public. Exemptions granted shall not exceed one year but may be renewed. (§ 13).

XII. HEARINGS AND JUDICIAL REVIEW

No rule and no amendment or repeal thereof shall take effect except after public hearing and after the Advisory Council has been afforded at least 30 days prior to publication of the proposed text to comment thereon. (§ 14(1)).

Any person aggrieved by any order of the Board may have judicial review thereof by appeal, within 30 days after the date of the order, to the district court of the county in which the source of emission is located. (§ 14(3)). Appellants review shall be upon the record made before the Board. (§ 14(3) (c)).

XIII. CONFIDENTIALITY OF RECORDS

Any records or other information concerning air contaminant sources furnished to or obtained by the Board, as certified by the owner or operator, which relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the Board, unless the owner agrees to their publication or availability to the public. (§ 15).

2. Local Air Pollution Control Programs

Each municipality and county may on petition of 15% of its qualified electors, establish and administer an air pollution control program which:

- (1) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those herein imposed;
- (2) Provides for the enforcement of such requirements by appropriate processes;
- (3) Provides for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program; and
- (4) Is approved by the Board as adequate to meet the requirements of this act and any applicable rules adopted pursuant thereto. (§ 16).

The Board may require that a local effort must be areawide to be an acceptable alternative to direct State administration. (§16(2)).

I. STATE AND FEDERAL AID

Any local air pollution control program meeting the requirements herein and rules made pursuant thereto shall be eligible for State aid in an amount equal to 30% of the locally funded annual operating cost thereof. (§ 17(1)).

Subdivisions may make application for, receive, administer, and expend any Federal aid provided that any such application is first submitted to and approved by the Board (§ 17(2)).

II. PENALTIES

Any person who violates any provision of this act, or any rule or order made pursuant thereto shall be guilty of an offense and subject to a fine of not more than \$1000. Each day of violation constitutes a separate offense. (§ 18). The Board may seek injunctive enforcement of its rules and orders and may sue for penalties.

3. Smoke Abatement 2/

It is lawful for any county or incorporated city or town where injurious and unhealthy smoke and fumes exist, upon petition signed by at least 100 of the resident taxpayers of the county, city, or town, to make contracts with such persons or corporations as will, in the opinion of the Board of County Commissioners or City Council best accomplish the purpose, for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided. (§ 8 11-2501 and 11-2502).

An election, held upon proper notice, wherein the electors approve or disapprove the contract negotiated by the county, city or town and the bond issue necessary to carry it out is required. (§ 8 11-2504 and 11-2505).

2/ Citations refer to Revised Codes of Montana 1947 Annotated.

4. Tax Exemption

Facilities, machinery, equipment, or real property utilized to reduce, eliminate, control or prevent air pollution shall be taxed at a rate of seven percent of the true and full value of such facilities, machinery, equipment, or property. The decision as to utilization shall be made by the Director and approved by the State Board of equalization. (§ 20).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Nebraska 1/

Cities having a population of 150,000 inhabitants or more have power by ordinance to provide for the abatement of dense volumes of smoke. (§ 14-102 (33)).

A primary city shall have power to regulate in the area which is within the city or within three miles of the city and outside the zoning jurisdiction of any city or village in order to secure the general health; to provide rules for the prevention, abatement and removal of nuisances, including the pollution of air and water; to make and prescribe regulations for the construction, location and regulation of all slaughterhouses, stockyards, warehouses, commercial feed lots, stables or other places where offensive matter is kept, or is likely to accumulate; (§ 15-237).

The mayor shall have such jurisdiction as may be vested in him by ordinance, over all places within the city or within three miles of the corporate limits of the city and outside of any organized city or village, for the enforcement of the health ordinances and regulations thereof, and for the purpose of carrying out the provisions of all such ordinances except that the ordinances respecting taxation shall not be enforced outside of the corporate limits of such primary city. (§ 15-311).

1/ Citations refer to Revised Statutes of Nebraska, 1943.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Nevada 1/

1. Air Pollution Control Act

I. ADMINISTRATIVE ORGANIZATION

Designates the Department of Health and Welfare as the air pollution control agency of the State for the purposes of (1) adopting through the Board of Health minimum air pollution abatement rules and regulations; and (2) the Federal Act insofar as it pertains to State programs. (Section 11). Creates a State Air Pollution Control Advisory Council, to consist of a member of the State Board of Health and ten others appointed by the Governor. (Section 15). A State Air Pollution Control Hearing Board is created by Section 19 consisting of five members receiving \$20 per day for their services. Board members are appointed by the Governor from the Advisory Council. (Section 19 and 20).

II. POWERS AND DUTIES

A. Of the Department

- (1) To cooperate with the Secretary of Health, Education, and Welfare and other agencies of the Federal Government, other States, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling air pollution;
- (2) To apply for and receive funds made available to the Department for state programs under the Act by any agency of the Federal Government;
- (3) To recommend measures for control of air pollution originating in the State;
- (4) To certify to the appropriate Federal authority that facilities are in conformity with the State program and requirements for control of air pollution, or will be in conformity with the state program and requirements for control of air pollution if such facility is constructed and operated in accordance with the application for certification. (Section 14).

1/ Citations refer to Chapter 392, Laws 1967.

The Department, through the Board of Health, may:

- (1) promulgate, amend, and enforce reasonable rules and regulations; and
- (2) delegate authority to enforce State rules and regulations relating to air pollution control to districts, counties, cities or towns. (Section 13).

B. Of the Counties and District Boards of Health

- (1) Adopt, after public hearing, rules and regulations; (Section 25),
- (2) Determine facts and make investigations and in connection therewith enter upon any private or public property believed to be a source of contaminants contributing to air pollution;
- (3) Institute legal proceedings to compel compliance with this act or any rule or regulation adopted by such county or district board of health;
- (4) Advise, consult and cooperate with municipalities, counties, other States, the Federal Government and other interested parties in regard to matters of common interest in the field of air quality control;
- (5) Encourage and make every reasonable effort to obtain the voluntary cooperation of persons in the preservation or the restoration of a reasonable degree of air purity; and
- (6) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the Federal Government, or from any person. (Section 24).

III. RULES AND REGULATIONS

Before the adoption of any rule or regulation, the State Board of Health or any county or district board of health shall hold a public hearing. (Section 25),

The county or district board of health is to appoint an air pollution hearing board of 3 or 5 members. (Section 22),

Rules or regulations shall not specify (a) the type, design, or method of installation of any equipment, except equipment used to dispose of combustible refuse; (b) the type of construction of any plant; or (c) the manufacturing process, method or fuel used. (Section 27),

IV. VIOLATIONS; PROCEDURE

When the county board of health, the district board of health or the State Board of Health or a control officer of any such board has reasonable cause to believe that a person is violating any rule or regulation adopted pursuant to this act, a notice of violation shall be served and shall state:

- (1) with particularity, the act being done that constitutes the violation; and
- (2) in its entirety, the certain rule or regulation being violated.

A reasonable time for compliance shall be allowed if a person receiving a notice provides a written response setting forth the nature of and time needed for corrective action and makes such periodic reports as may be necessary to demonstrate reasonable progress toward final compliance.

Any person believing himself aggrieved by action of the State Board of Health, any county or district board of health or any control officer may request that the hearing board hold a hearing to determine:

- (1) The act set forth in the notice constitutes a violation;
- (2) A variance is justified; and
- (3) A reasonable time has been allowed for compliance.

Upon making the determinations required above, the hearing board may issue a cease and desist order, which may be conditional and require a person to refrain from the particular act unless certain conditions are met. (Section 29(2)).

The Chairman, or in his absence, the Vice Chairman, of the State Air Pollution Control Hearing Board or of a county or district hearing board may issue subpoenas to compel attendance of witnesses and production of evidence. (Section 31).

V. ENFORCEMENT

The State Board of Health may act to enforce this act only where the State Air Pollution Control Hearing Board, at the conclusion of a hearing requested by the Board of Health, determines that a reasonable time has been allowed for action by the county or district and that:

- (1) an air pollution source is releasing contaminants that cause pollution beyond the territorial limits of the county in which the source is located;
- (2) the county or district board of health of a county or health district in which an air pollution source is located has failed to act to reasonably enforce its rules and regulations or ordinances for air pollution control or the rules and regulations of the Board of Health;
- (3) the county or district board of health specifically requests that the State Board of Health assume jurisdiction over an air pollution source or area located within the county or health district, or over the entire county or district. (Section 23).

VI. INJUNCTIONS

Upon failure or refusal of a person to comply with a cease and desist order, an action may be filed to restrain and enjoin the person from engaging in further acts violating such order. The court shall proceed as in other actions for injunctions. (Section 33).

VII. JUDICIAL REVIEW

Any person aggrieved by a decision of a hearing board may, at any time within 30 days after the filing of the decision, petition the district court for review of the hearing board's decision. (Section 34).

VIII. INSPECTIONS

No person may refuse entry or access to any authorized representative or employee of the State or any county or district board of health who requests entry for purposes of inspection, presents appropriate credentials and provides reasonable advance notice of entry, nor may any person obstruct, hamper or interfere with any such inspection. (Section 36).

IX. CONFIDENTIALITY OF RECORDS

Any records or other information furnished to or obtained by any member of the State Board of Health, county or district board of health or any officer, concerning one or more air pollution sources, which records and information relate to production or sales figures or to the processes or production unique to the owner or operator or affect the competitive position of such owner or operator, shall be confidential. (Section 40).

X. PENALTIES

Violations of rules and regulations promulgated pursuant to sections 11, 13 or 24 constitute misdemeanors and also public nuisances which may be enjoined or abated. (Section 40).

2. Local Programs ^{1/}

The Nevada statute authorizes air pollution control by county governments and incorporated cities, and provides for cooperative agreements between them.

Within the boundaries of their counties and within the corporate limits of their cities the boards of county commissioners and governing body of each incorporated city are granted "the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases" (§§ 244.361, 268.410).

The boards of county commissioners and the governing bodies of incorporated cities in the county are authorized to enter into cooperative agreements with each other for the joint use of county and city personnel, equipment and facilities, upon such terms and conditions and within such areas within the county as may be determined for the promotion and protection of the health of the inhabitants of the county and city through the regulations, control and prohibition of the excessive emission of dense smoke and air pollution, (§ 277.045).

The county or district board of health is to appoint an air pollution hearing board of 3 or 5 members. (Section 22, Ch. 392, Laws 1967).

The county or district board of health may exercise the powers enumerated in part II of Section 1 concerning Powers and Duties, supra.

^{1/} Citations refer to Nevada Revised Statutes.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Hampshire 1/

1. Air Pollution Control

I. POLICY STATEMENT

It is hereby declared to be the policy of New Hampshire to achieve and maintain a reasonable degree of purity of the air resources so as to promote the public health, welfare and safety, prevent injury or detriment to human, plant, and animal life, physical property and other resources, foster the comfort and convenience of the people, promote the economic and social development of this state and to facilitate the enjoyment of the natural attractions of this state. (Sec. 125:78).

II. DEFINITIONS

"Air pollution" means the presence in the outdoor atmosphere of one or more contaminants or any combination thereof in sufficient quantities and of such characteristics and duration as are or are likely to be injurious to public welfare, to the health of human, plant, or animal life, or cause damage to property or create a disagreeable or unnatural odor or obscure visibility or which unreasonably interferes with the enjoyment of life and property.

"Air contaminant" means soot, cinders, ashes, any dust, fume, gas, mist (other than water), smoke, vapor (other than water), odor, toxic or radioactive material, particulate matter, or any combination thereof.

"Emission" means a release into the outdoor atmosphere of air contaminants.

"Person" means any individual, partnership, firm or co-partnership, association, syndicate, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any other entity recognized by law as the subject of rights and duties. (Sec. 125:79).

III. ADMINISTRATIVE ORGANIZATION

Designates the Department of Health and Welfare, Division of Public Health Services, as the State air pollution control agency.

1/ Citations refer to New Hampshire Revised Statutes Annotated as amended at Chapter 433, Laws 1967.

The Director of the Division of Public Health Services shall designate an individual to be director of the agency who shall be responsible for implementation of this subdivision and any regulations promulgated hereunder. The director shall act as technical secretary to the Air Pollution Commission.

Creates and establishes an Air Pollution Commission which shall be composed of nine members, including one representing the steam power generating industry; one representing the fuels industry; one representing the manufacturing component of industry; one representing the field of municipal government; one licensed practicing physician; one representing the field of recreation; and three appointed at large. The members shall be appointed by the governor with the consent of council. Members serve for a term of four years and shall receive no compensation for their services but shall receive necessary travel and other expenses while engaged in actual work of the Commission. The governor and council shall annually select one of the Commission members to serve as chairman, and one of the Commission members to serve as vice-chairman. The Commission shall hold meetings on the call of the chairman or director, of the state air pollution control agency. (Sec. 125:81 (I), (II), (III)),

IV. POWERS AND DUTIES

- A. It shall be the duty of the Commission to make suggestions to, and to advise the agency concerning the policies, plans, and goals to be attained in the administration of this subdivision; to hold such hearings, to issue notices of hearings, and subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as the Commission may deem necessary; and to keep the governor and council informed on matters relative to air pollution. The Commission shall have the power to make, issue, amend, or repeal and promulgate rules and regulations consistent with this subdivision for the prevention, control and abatement and limitation of air pollution; provided that nothing in this subdivision shall be construed to authorize the Commission to specify the type, design, method of installation or type of construction of any equipment or manufacturing processes, or the kind or composition of fuels to be sold, stored, or used. Any rules or regulations promulgated pursuant to this subdivision shall be consistent with provisions of Federal law, if any, relating

to control of emissions from the vehicles concerned. The State air pollution control agency shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment, designed for the control of emissions from motor vehicles, if such features or equipment have been certified, approved or otherwise authorized pursuant to Federal law. However, no such rule, regulation, amendment, or repeal shall be adopted except after public hearing. Said public hearing shall be held by the Commission provided that thirty days' notice thereof shall be given by public advertisement; provided further that no such rule, regulation, amendment, or repeal shall be or become effective until thirty days after such public hearing, or until such time as shall be determined by the Commission to be reasonable and necessary. (Sec. 125:80),

- B. (1) To develop a comprehensive program and provide services for the study, prevention, and abatement of air pollution;
- (2) To conduct and encourage studies relating to air pollution;
- (3) To collect and disseminate the results of studies relating to air pollution;
- (4) To advise, consult, and cooperate with the cities and towns and other agencies of the state, Federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution;
- (5) To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;
- (6) To enter at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed to be either an air pollution source or in violation of any of the rules or regulations or orders promulgated hereunder. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection or investigation shall not be disclosed by the director without permission of the person whose source is inspected or investigated;

- (7) To accept, receive, and administer grants or other funds or gifts for the purpose of carrying out any of the functions of this act, including such monies given under any Federal law to the state for air pollution control activities, surveys, or programs. (Sec. 125:81).

V. NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT

Whenever the Director finds that a source of air pollution as constructed, operated, or maintained has resulted in a violation of any of the provisions of this subdivision or any codes, rules, or regulations of the Commission, he shall notify any person found to be causing, allowing, or permitting such violation of the nature of that violation and order that prior to a time fixed by the Director, that such person shall cease and abate causing, allowing, or permitting such violation and take such action as may be necessary for the source of air pollution to be abated, unless a variance is granted. Any person aggrieved by the finding or order of the agency may request a hearing before the Commission, and the Commission may affirm the finding or order of the agency or reverse or modify the finding or order of the agency.

A. Appeal from Decision on Motion for Reconsideration.

Within thirty days after the application for reconsideration of an order is denied, or if the application is granted then within thirty days after the decision of such reconsideration, the applicant may appeal by petition to the superior court.

B. Burden of Proof.

Upon the hearing the burden of proof shall be upon the party seeking to set aside the decision of the Commission to show that the same is unreasonable or unlawful, and all findings of the Commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is unjust or unreasonable.

C. Parties.

Any person whose rights may be directly affected by said appeal may appear and become a party, or the court may order such persons to be joined as parties as justice may require.

D. Evidence; How Considered.

All evidence transferred by the Commission shall be, and all additional evidence received may be, considered by the court regardless of any technical rule which might have rendered the same inadmissible if originally offered in the trial of an action at law.

E. Judgment.

The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the decision complained of in whole or in part, as the case may be; but in case such decision is wholly or partly vacated the court may also, in its discretion, remand the matter to the Commission for such further proceedings, not inconsistent with the decree, as justice may require.

F. Hearing, etc.

The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law.

G. Costs.

Costs shall not be allowed against the commission unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. (Sec. 125:82).

VI. VARIANCES

Upon application and after a hearing, the Commission may suspend the enforcement of or any part of this Act or of any rule or regulation promulgated hereunder in the case of any person who shall show that the enforcement thereof would produce serious economic hardship on such person without equal or greater benefits to the public. No variance shall be granted to any person applying therefor who is causing air pollution which creates a danger to public health, welfare, or safety.

Any variance granted hereunder shall be granted for such period of time, not exceeding one year, as the Commission shall specify but any variance may be continued from year to year. No variance shall be construed as to relieve the person receiving it from any liability imposed by law for the Commission or maintenance of a nuisance. (Sec. 125:83).

VII. EMERGENCY

Whenever the Director finds that an emergency exists requiring immediate action to protect the public health, welfare, or safety, he may with the consent of the governor and council issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the Commission, shall be afforded a hearing within forty-eight hours. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. (Sec. 125:84).

VIII. INJUNCTIVE RELIEF

A civil action may be instituted in superior court on behalf of the agency for injunctive relief to prevent the violation of the provisions of this subdivision or codes, rules, or regulations of the Commission, and the court may restrain violations. (Sec. 125:85).

IX. PENALTY

Any person who violates any of the provisions of the Act or rule or regulation of the Commission or who violates any order of the agency shall be fined not less than fifty dollars nor more than five hundred dollars, and in addition thereto may be enjoined from continuing such violation. Each day any person neglects or refuses to comply therewith shall constitute a separate offense. (Sec. 125:86).

X. EFFECTIVE DATE

July 1, 1967.

2. Tax Exemption for Control Devices

New Hampshire provides for limited tax exemption (a percentage of the valuation of equipment effective in the control of air pollution) as determined by the Water Pollution Commission for "any treatment facility, device, appliance or installation (whether consisting of real or personal property or a combination of both) built, constructed or placed in operation by any person, firm or corporation in this State wholly or partly for the purpose of reducing, controlling, or eliminating any source of pollution" because of the "general public benefits resulting from the control of pollution in the surface waters or air of the State." § 149:5-a (1964 Replacement Edition).

3. Auto Exhaust

Chapter 205, Laws of 1961, amended RSA 263:46, (1966 Replacement Edition) dealing with mufflers on motor vehicles, to require, among other things, that the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of "excessive fumes, smoke, flame, gas, oil or fuel residue." (Effective Aug. 27, 1961).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Jersey 1/

I. GENERAL STATEMENT

Chapter 106, Laws 1967 abolished the Air Pollution Control Commission and transferred all of its functions, powers and duties to the Department of Health. The membership of the Clean Air Council was increased from 15 to 17 members.

II. DEFINITIONS

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazard.

"Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof. (§ 5 Ch. 106, Laws 1967).

III. ADMINISTRATIVE ORGANIZATION

Abolishes the Air Pollution Control Commission and transfers all of its functions, powers and duties to the Department of Health (§ 2, Ch. 106, Laws 1967).

Creates in the Department of Health a Clean Air Council, to consist of the Commissioners of Labor and Industry and Community Affairs, the Secretary of Agriculture, six citizens representing the general public and eight members representative of various organizations in the State. Members shall be appointed for four year terms and shall serve without compensation. (§ 3(a)(d), Ch. 106, Laws 1967).

1/ Citations refer to New Jersey Statutes Annotated and 1966 Cumulative Annual Pocket Part.

IV. POWERS AND DUTIES OF THE COUNCIL

- a. Request from the Commissioner of Health information concerning the Air Pollution Control Program.
- b. Consider any matter relating to the preservation and improvement of the program and advise the Commissioner thereof;
- c. Submit to the Commissioner any recommendations deemed necessary for the proper conduct and improvement of the Program;
- d. Study the program and make recommendations to the Commissioner;
- e. Study the codes, rules and regulations promulgated by the Department of Health in regard to air pollution control and make recommendations for their improvement;
- f. Study and investigate the state of the art and the technical capabilities and limitations of air pollution control and report their findings and recommendations to the Commissioner;
- g. Study and investigate the need for programs for the long-range technical support of the program and report their findings and recommendations to the Commissioner; and
- h. Hold public hearings in regard to existing air pollution control, statutes, codes, rules and regulations and upon the state of the art and technical capabilities and limitations in air pollution control and report its recommendations to the Commissioner. (B 4, Ch. 106, Laws 1967).

V. PERMITS

No person shall construct, install or alter any equipment or control apparatus until an application has been filed with the Department and an installation or alteration permit issued by the Department.

No person shall use or cause to be used for any such new or altered equipment or control apparatus for which an installation or alteration permit is required or issued until an operating certificate has been issued by the Department. Trade secrets need not be revealed to the Department of Health in applying for a permit.

One- or two-family dwellings or dwellings of six or less family units, one of which is owner-occupied are exempt from permit requirements. (§ 13(a) Ch. 106, Laws 1967).

VI. POWERS AND DUTIES OF THE STATE DEPARTMENT OF HEALTH

The Department is directed to control air pollution in accordance with any code, rule or regulation promulgated by the Commission and is empowered to:

- a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution.
- b. Conduct and supervise State-wide programs of air pollution control education.
- c. Require the registration of and the filing of reports by persons engaged in operations which may result in air pollution. Registration reports filed are privileged and not admissible in evidence in any court.
- d. Enter and inspect any building or place, except private residences, to investigate an actual or suspected source of air pollution and to ascertain compliance with any code, rules and regulations of the Commission. Any information so obtained relating to secret processes or methods of manufacturing is to be kept confidential and is to be inadmissible in evidence in any court or proceeding except before the Department.
- e. Receive or initiate complaints of air pollution, hold hearings, and institute legal proceedings for the prevention of air pollution.

- f. With the approval of the Governor, cooperate with, and receive money from the Federal government, the State government, or any county or municipal government or from private sources for the study and control of air pollution. (§ 26:2C-9).
- g. To employ such employees as it may deem necessary. (§ 26:2C-7).
- h. To formulate and promulgate, amend and repeal codes and rules and regulations controlling and prohibiting air pollution throughout the State but only after public hearing held after 30 days' prior notice thereof by public advertisement of the date, time and place of such hearing at which opportunity to be heard by the Department has been given to the public. No such code, rule or regulation, amendment or repeal may be effective, until 60 days after its adoption. (§ 26:2C-8).

VII. PROCEDURES

- A. Whenever the Department has cause to believe that any person is violating any code, rule, or regulation promulgated by the Department, a prompt investigation is to be made. (§ 26:2C-14).

No person shall obstruct the performance of the Department's duties nor refuse to permit its personnel to perform their duties by refusing them, upon proper identification and presentation of a written order of the Department, entrance to any premises at reasonable hours. (§ 26:2C-9.1).

- B. (1) If inspection reveals that a violation exists, the Department may order such violation to cease and take steps necessary to enforce said order. (§ 26:2C-14).
- (2) Where no code, rule or regulation has been promulgated which sets specific limits for emissions of the type discovered and alleged, no order to cease shall be issued until a preliminary hearing is held, upon not less than 15 days notice by the Department to all interested persons. (§ 26:2C-14).

- C. Any person aggrieved by an order of the Department shall, upon application made within 15 days after notice thereof, be entitled to a hearing before the Department within 30 days after application and to at least 15 days notice of the hearing. Within 30 days after such hearing, the Department shall issue an order modifying, approving, or disapproving its prior order and serve a copy of the new order on interested parties. The Department may stay the operation of the original order pending final determination. (Ch. 215, Laws 1962).
- D. Any hearing required by the act to be held before the Department is to be held before the State Commissioner of Health, or a member of the Department designated by him, who has power to subpoena witnesses and compel their attendance, administer oaths and require the production of any books or papers relating to any matter under investigation in any such hearing. (§ 26:2C-17).
- At such a hearing testimony is to be under oath and recorded stenographically, but the strict rules of evidence do not apply. (§26:2C-16).
- E. Review of any final decision or action by the Department or of the validity of any code, rule or regulation promulgated by the commission shall be by procedure in lieu of prerogative writs. (§ 26:2C-20).

VIII. VIOLATIONS AND PENALTIES

If any person violates any of the provisions of this act or any code, rule, regulation or order promulgated or issued pursuant to the provisions of this act, the Department may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

Any person who violates the provisions of this act or any code, rule, regulation or order promulgated or issued pursuant to this act shall be liable to a penalty of not more than \$2,500.00 to be collected in a civil action by a summary proceeding under the penalty enforcement law (N.J.S. 2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues after the date given by which the violation must be eliminated in accordance with the order of the Department shall constitute an additional, separate and distinct offense.

The Department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the Department as may appear appropriate and equitable under all of the circumstances, including a rebate of any such penalty paid to the extent of 90% thereof where such person satisfies the Department within 1 year or such other period as the Department may deem reasonable that such violation has been eliminated or removed or that such order or injunction has been met or satisfied, as the case may be, by the installation of air pollution control apparatus. (Chapter 105, Laws 1967).

IX. SCOPE AND CONSTRUCTION

This Act shall not impair any existing civil or criminal remedy for any wrongful action which is a violation of any code, rule or regulation of the Department nor supersede existing or future ordinances or regulations of any municipality or county or board of health not inconsistent with this act, nor shall it affect in any manner the powers, duties and functions vested in the State Department of Health by other provisions of law. (§ 26:2C-21-23).

2. Air Pollution Emergency Control Act 1/

The Legislature finds and declares that air pollution may at certain times and places so seriously affect public health and so threaten the population as to warrant emergency powers to prevent or minimize disasters of unforeseeable proportions.

If the Commissioner of Health determines that air pollution in any area constitutes an unreasonable and emergency risk to the health of those in the area, such determination shall be communicated to the Governor. The Governor may, by proclamation, declare that an emergency exists and may prohibit, restrict or condition the following:

- (1) Motor vehicle traffic;
- (2) The operation of retail, commercial, manufacturing, industrial, or similar activity;
- (3) Operation of incinerators;
- (4) The burning or other consumption of fuels;
- (5) The burning of any materials whatsoever; and
- (6) Any and all other activity which contributes or may contribute to the emergency.

Orders of the Governor shall be enforced by the Department of Health, Defense, and the State and local police and air pollution enforcement personnel forces. Those authorized to enforce said orders may use such reasonable force as is required in the enforcement thereof, and may take such reasonable steps as are required to assure compliance therewith including the following:

- (1) Enter upon any property or establishment believed to be violating said order and, if a request does not produce compliance, causing compliance with said order;
- (2) Stopping, detouring, rerouting, and prohibiting vehicle traffic;
- (3) Disconnecting incinerator or other types of combustion facilities;

1/ Citations refer to Chapter 108, Laws 1967

3. Local Programs 1/

A. County Air Pollution Control Associations

The Department is directed to organize a county air pollution control association in each county in which it determines that the establishment of such association is advisable to assist it in carrying out the purposes of the Act (§ 26:2C-11). The duty of each county association is to study air pollution problems of the county (§ 26:2C-12). Members of the association shall be residents of the county and are appointed by the Department to serve without compensation.

B. Submission of Proposed Local Regulations to County Association.

The Department is required to submit to the county air pollution control association of the county affected for discussion and report all codes, rules or regulations of strictly local application before they are adopted. (§ 26:2C-13).

1/ Citations refer to New Jersey Statutes Annotated and 1966 Cumulative Annual Pocket Part.

4. Interstate Sanitation Commission

Chapter 105, Laws of 1961, (The Interstate Air Pollution Control Act), constitutes agreement by the State of New Jersey to the expansion of the powers of the Interstate Sanitation Commission to include studies of interstate air pollution problems between New York and New Jersey.

The Act is substantially similar in import to legislation enacted in 1960 by the State of New York. Under the terms of these statutes, they became operative with the effective date--September 8, 1961--of the New Jersey Act.

The consent of Congress to this change in the terms of the Interstate Compact establishing the Interstate Sanitation Commission (49 Stat. 932) was granted in 1956 by P. L. 946, 84th Congress, 2nd Session.

5. Motor Vehicle Pollution Control 1/

The Department of Health, after consultation with the Director of the Division of Motor Vehicles, shall have the power to formulate and promulgate, amend and repeal codes, rules and regulations establishing standards and requirements for control of air contaminants from motor vehicles. Any code, rule or regulation shall be applicable to such classification of motor vehicles as the Department shall determine to be necessary to carry out the purposes of the Air Pollution Control Act. Any code, rule or regulation shall apply to such motor vehicles not earlier than 180 days following the date of adoption.

The codes, rules and regulations shall establish standards and requirements, for the control of air contaminants from motor vehicles manufactured with air pollution control devices, systems or engine modifications consistent with requirements of the Motor Vehicle Air Pollution Control Act (77 Stat. 392, 42 U.S.C. 1857). For vehicles not manufactured with pollution control devices, systems or engine modifications in accordance with the Motor Vehicle Control Act, the codes, rules and regulations shall establish standards and requirements for control of air contaminants which can reasonably be attained by properly functioning motor vehicles without the addition of any air pollution control devices, systems, or engine modifications.

1/ Chapter 16, Laws 1966, supplementing the Air Pollution Control Act (1954); N.J.S.A. 26:2C-8e.

6. Tax Exemption 1/

I. GENERAL STATEMENT

This act supplements the exemption provisions of the real and personal property taxation statutes. It provides an exemption from taxation for any equipment, facility or device constructed or installed before or after the effective date of the act which is used primarily for abating or preventing pollution of the atmosphere and which has been certified to be an air pollution abatement facility by the State Commissioner of Health.

II. PROCEDURE

- A. The State Commissioner of Health, when requested, shall certify a facility as being an air pollution abatement facility whenever he finds the equipment, facility or device constructed or installed or to be constructed or installed, was designed primarily for the control or abatement of pollution of air and is suitable and reasonably adequate for such purpose.
- B. The certificate shall contain information identifying the facilities and the cost thereof. It shall be in such form and in such detail as the commissioner shall prescribe.
- C. The applicant shall receive the certificate and a copy shall be given to the assessor of the taxing district in which the facilities are located and have been installed.
- D. The exemption becomes effective for the tax year following the year in which the certification has been granted and it remains effective during its use primarily for purposes of control or abatement of pollution.
- E. Upon notice and opportunity for hearing, the certificate may be revoked whenever it appears that:
 - (1) The certificate was obtained by fraud or misrepresentation;
 - (2) The claimant for exemption has failed substantially to proceed with the construction, reconstruction, installation or acquisition of pollution control facilities;

1/ Chapter 127, Laws 1966, supplementing Article 2 of Chapter 4 of Title 54 of the Revised Statutes of New Jersey (§ 54: 4-3.3 et seq. N.J.S.A.).

New Jersey -- Continued

- (3) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different primary purpose;
- (4) The claimant for exemption has so departed from the certified equipment, design and construction, that, in the opinion of the Commissioner, the primary purpose of the installation is no longer the prevention of pollution or the installation is not suitable and reasonably adequate for the purpose for which it was certified;
- (5) Performance of the equipment as installed is not, in the opinion of the Commissioner, suitable and reasonably adequate for the primary purpose for it was certified;
- (6) In lieu of revocation the Commissioner may modify the certificate in accordance with the facts presented.
- (7) A copy of the notice of revocation or modification of any certificate shall be forwarded to the assessor of the taxing district in which the equipment involved is located.

III. EFFECTIVE DATE

This act shall take effect immediately, Approved June 17, 1966.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New Mexico 1/

1. Air Quality Control Act

I. GENERAL STATEMENT

The "Air Quality Control Act" creates a procedural program for controlling air pollution.

II. DEFINITIONS

"Air contaminant" means any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, ionizing radiation, any combination thereof or any decay or reaction product thereof. (Sec. 2A)

"Air pollution" means the emission into the outdoor atmosphere of one or more air contaminants in such quantities and duration as with reasonable probability will injure human health, animal or plant life, or property, or as will unreasonably interfere with the public welfare or the use of property. (Sec. 2B)

"Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns. (Sec. 2C)

III. ADMINISTRATIVE ORGANIZATION

The State Board of Public Health is designated as the air pollution control agency for all purposes under Federal legislation relating to air pollution. Except as provided by this Act, the jurisdiction of the State Board of Public Health extends to all areas of the State not within the boundaries of municipalities or A class counties which have elected by adopting an appropriate ordinance to assume jurisdiction for the administration and enforcement of this Act and with State Board of Health regulations. (Secs. 3 and 4A)

IV. POWERS AND DUTIES

(1) Adopt, promulgate, publish, amend and repeal regulations consistent with this Act but not prevention or abatement methods may not be specified (Sec. 5B(1)).

1/ Citations refer to Chapter 277, Laws 1967.

- (2) Develop facts and make investigations and studies consistent with this Act, and in connection therewith, enter any private or public property which the board has reasonable cause to believe is or will become a source of air contaminants contributing to air pollution, and require the production of records relating to emissions which cause or contribute to air pollution (Sec. 5B(2));
- (3) Cause to be instituted legal proceedings to compel compliance with this Act or any regulation of the board (Sec. 5B(3));
- (4) Advise, consult, contract and cooperate with municipalities, A class counties, other States, the Federal Government and other interested parties in regard to matters of common interest in the field of air quality control, and initiate cooperative action between municipalities, counties and the board, or any combination thereof, for control of air pollution (Sec. 5B(4));
- (5) Encourage and make every reasonable effort to obtain voluntary cooperation by persons in the preservation or the restoration of a reasonable degree of air purity (Sec. 5B(5));
- (6) Consult, upon request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficiency of the device or system, or the problem which may be related to the source, device or system (Sec. 5B(6));
- (7) Accept, receive and administer grants or other funds or gifts from public and private agencies including the Federal Government, or from any person (Sec. 5B(7)); and
- (8) Classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution (Sec. 5B(8)).

V. PROCEDURE

A. Regulations

No regulation or emission control requirement or amendment or repeal thereof shall be adopted until after a public hearing has been held. (Sec. 6)

B. Hearings

Public hearings are to be held within the area of the state concerned. Notice of such hearing is to be published in a newspaper of general circulation in the area affected. All interested persons are to be allowed reasonable opportunity to submit data, views or arguments and to examine witnesses testifying at the hearing. The Board may designate a hearing officer to take evidence in the hearing. (Sec. 6).

C. Confidentiality

Records or other information about processes or production techniques unique to the owner or operator or whose publication would adversely affect his competitive position shall be kept confidential. (Sec. 10).

VI. VALIDITY OF REGULATION--JUDICIAL REVIEW

Any person affected by a regulation adopted by the Board may appeal to the court of appeals for further relief. Upon appeal, the court shall set aside the regulation only if found to be: (a) arbitrary, capricious or an abuse of discretion; (b) not reasonably related to the prevention or abatement of air pollution; and (c) otherwise not in accordance with law. (Sec. 7).

VII. VARIANCES

The Board may grant an individual variance from the limitations prescribed under this Act or any regulation of the Board whenever it is found that compliance with any part of this Act or any rule of the Board will result in an arbitrary and unreasonable taking of property or will impose an undue economic burden upon any lawful business, occupation or activity, and that the granting of the variance will not result in a condition injurious to health or safety. (Sec. 8).

VIII. EMERGENCY PROCEDURE

Notwithstanding other provisions of this Act, if the Director of Public Health determines that any person is causing or contributing to air pollution of such characteristics and duration as to create an emergency which requires immediate action to protect human health or safety, the Director, with the concurrence of the Governor, shall order the person to reduce immediately the emission of air contaminants creating the emergency condition. (Sec. 9).

IX. ENFORCEMENT

If, as a result of investigation, the Board has good cause to believe that any person is violating the air quality standard set forth in this Act or any regulation of the Board, and if the Board is unable within a reasonable time to obtain voluntary cooperation to prevent air pollution, it may cause an action for injunction or other appropriate relief to be filed in the district court of the county in which the emission originates to secure the abatement of the emission of air contaminants. (Sec. 11)

X. PENALTIES

Notwithstanding any other provision of this Act, any municipality or A class county may prescribe penalties for violations of an ordinance: (a) regulating open burning or commercial, industrial or residential incineration; or (b) prohibiting the removal of motor vehicle emission control devices installed as required by law and requiring the maintenance of such devices in operating condition. (Sec. 12).

2. Local Programs 1/

Incorporated cities and towns are authorized to declare what shall be a nuisance and to abate the same and to impose fines upon parties who may create, continue or suffer nuisances to exist. (§ 14-21-30).

Incorporated villages are authorized to prevent the presence within their limits of anything dangerous, offensive, unhealthy or indecent and to cause any nuisances to be abated (§ 14-23-1).

Any municipality or A class county which provides for air quality control shall, by ordinance, provide for the local administration and enforcement. The ordinance shall create a municipal, county, or joint air quality control board to administer and enforce the provisions of the Air Quality Control Act within the boundaries of the municipality or county. The provisions of any such ordinance shall be consistent with the substantive and procedural provisions of the Act. If a county or municipality fails to act to implement its ordinance, the State Board of Health will return its complete jurisdiction. (Sec. 4, Ch. 277, Laws 1967).

1/ Citations refer to New Mexico Statutes.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

New York 1/

1. Air Pollution Control Board

I. GENERAL STATEMENT

In 1957 the State of New York created an Air Pollution Control Board within the State Department of Health for the purpose of controlling and abating existing and future air pollution in the interests of the public health and welfare (Title II, § 1268-1 (a); Title I, § 1266). This legislation was enacted as Article XII-A of the Public Health Law.

"Air pollution" is defined as "the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, however, all conditions subject to the requirements of the labor law and industrial code." (Title I, § 1267-4).

"Air contaminant" is defined as "a dust, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof" (Title I, § 1267-3).

"Air contamination" is defined in § 1267-5 as meaning "the presence in the outdoor atmosphere of one or more air contaminants which contribute or which are likely to contribute to a condition of air pollution."

II. ADMINISTRATIVE ORGANIZATION

A. Air Pollution Control Board

(1) Composition and Organization

The Air Pollution Control Board within the Department of Health is composed of the following nine members: The Commissioners of the Departments of Health, Agriculture and Markets, Commerce, Conservation, and Labor or a deputy or other representative of each Department.

1/ Citations refer to McKinney's Consolidated Laws of New York Annotated, Book 44 - Public Health Law, and 1961 Cumulative Annual Pocket Part.

designated by the Commissioner, and four members appointed by the Governor with the advice and consent of the Senate, one of whom shall be a representative of the medical profession, one of the engineering profession, one of industry and one of the political subdivisions of the State (Title II, § 1268). The Commissioner of Health is Chairman of the Board (Title II, § 1269-1). The appointed members of the Board serve for four years on staggered terms (Title II, § 1269-1).

The Board must meet at least quarterly. Special meetings may be called by the Chairman and must be called by him upon receipt of written request signed by two or more board members (Title II, § 1272).

Six members constitute a quorum to exercise code, rule, and regulation making responsibilities; to transact any other business, five members constitute a quorum (Title II, § 1272).

(2) Technical, Scientific, Legal and Other Services

Technical, scientific, legal and other services shall be performed by Departments or agencies of the State without additional compensation (Title II, § 1274).

(3) Employees and Advisers

The Board shall have the power to employ and compensate such other personnel as it shall determine necessary to carry out the provisions of Article XII-A and shall prescribe their powers and duties (Title II, § 1275).

(4) Codes, Rules and Regulations

A code, rule or regulation or any amendment or repeal thereof shall be approved in writing by at least six members of the Board and not by any deputy or representative (Title II, § 1276-1).

A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the State concerned (Title II, § 1276-2).

(5) Powers and Duties

a. General Authority

The Board is authorized to promulgate, amend, and repeal codes, rules and regulations for controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution and to include in such code, rules or regulations a general provision for controlling air contamination as the phrase "air contamination" is defined in § 1267-5. (Title II, § 1271-1 (a)).

b. Establishing Areas and Degree of Air Pollution

The Board has power to establish areas of the State and prescribe the following:

1. The degree of air pollution or contamination that may be allowed therein;
2. The extent to which air contaminants may be emitted to the air by any air contamination source;
3. Standards for the composition or use of fuels or energy sources in those types or classes of air contamination source which, in the Board's opinion, would discharge air contaminants in contravention of applicable emission or air quality standards;
4. Requirements and standards for the approval of plans or specifications for air cleaning installations. (Title II, § 1271-1(b) as amended, § 4(b), Ch. 902, laws 1966).

c. Administrative Powers

The Board shall have power to hold public hearings, conduct investigations, compel attendance of witnesses, receive such pertinent and relevant proof as it deems necessary, proper or desirable in order to effectively discharge its duties to control air pollution. (Title II, § 1271-1(c)).

d. Plants

The Board shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and of any new air pollution recognizing varying requirements for different areas of the State. (As amended, § 5, Ch. 902, laws 1966).

e. Cooperation

The Board shall encourage voluntary cooperation by all persons in controlling air pollution and contamination. (As added, § 5, Ch. 902, laws 1966).

III. HEALTH COMMISSIONER

A. Enforcement Power

The Health Commissioner is authorized to enforce the codes, rules and regulations of the Board. (Title III, § 1277 as added, § 9, Ch. 902, laws 1966).

B. Powers and Duties

The Commissioner shall have the following powers:

- (1) To enter and inspect any property, premise or place and to detain any motor vehicle to investigate either an actual or suspected source of air pollution or contamination or to ascertain compliance or non-compliance with any code, rule or regulation. (§ 1277 as added, § 9, Ch. 902, laws 1966).
- (2) To conduct or cause to be conducted studies and research with respect to air pollution, abatement or prevention. (§ 1277, as added, § 9, Ch. 902, laws 1966).
- (3) To determine by means of field studies and sampling the degree of air pollution in the State. (§ 1277, as added, § 9, Ch. 902, laws 1966).
- (4) Conduct program of air pollution control education, including the preparation and distribution of information relating to air pollution control and to provide advisory technical consultation services to local communities. (§ 1277 as added, § 9, Ch. 902, laws 1966).

- (5) To develop and conduct demonstration programs in cooperation with local communities. (§ 1277 as added, § 9, Ch. 902, laws 1966).
- (6) To promote the establishment of local laboratory facilities, including essential instrumentation, and to provide facilities and staff for training personnel of local communities in the principles of air sanitation. (§ 1277 as added, § 9, Ch. 902, laws 1966).
- (7) To serve as the State agent for the receipt of monies from the Federal government or other public or private agencies and to expend such monies after appropriation thereof for the purpose of air pollution control studies or research. (§1277 as added, § 9, Ch. 902, laws 1966).
- (8) To consider for approval plans or specifications for air cleaning installations or any part thereof submitted pursuant to the rules of the Board, and to inspect the installation for compliance with the plans or specifications. (§ 1277 as added, § 9, Ch. 902, laws 1966).
- (9) To approve types of crankcase ventilating systems and air contaminant emission control systems pursuant to standards promulgated by the Board, in accordance with the vehicle and traffic law. (§ 1277 as added, § 9, Ch. 902, laws 1966).
- (10) To do those things necessary, proper or desirable to enforce codes, rules or regulations promulgated under this law. (§ 1277, as added, § 9, Ch. 902, laws 1966).
- (11).To require immediate discontinuance of discharges into the atmosphere which he determines, after investigation, to constitute a danger to the health of the people and that it appears prejudicial to the interest of the State citizens to delay action. (Title III, § 1284, as amended, § 17, laws 1966).

IV. PROCEDURES

- A. Service of all processes of the Commissioner, except subpoenas, shall be in the same manner as a summons in civil action or by registered mail. (Title III, § 1278-2, as amended, § 10, Ch. 902, laws 1966).
- B. If the Commissioner has cause to believe that a violation of code, rule, or regulation has occurred, he shall cause a prompt investigation to be made. When such a violation has been shown to exist, the Commissioner shall have issued and served upon the alleged violator a written notice specifying the provision said to be in violation, the manner in which and the extent to which such person is said to violate, and he shall require such person to answer the complaint charges at a public hearing before the Commission with 15 days. (Title III, § 1280, as amended, § 11, 12, Ch. 902, laws 1966).
- C. The Commissioner or his delegate is authorized to hold hearings and to issue subpoenas requiring attendance and testimony of witnesses and the production of evidence relevant to matters involved at such hearings. The respondent may appear in person or by representative, with or without counsel, and may submit testimony, or may do both. In the case of contumacy or refusal to obey a subpoena, the supreme court shall have jurisdiction, upon the Commissioner's or delegate's application, to issue an order requiring obedience, and failure to comply with the order may be judged as contempt. (Title IV, § 1277-1, 2, 1277-5, 1277-3, 1281, as amended, § 13, laws 1966).
- D. After due consideration of statements and evidence, or, upon default in appearance of the respondent, the Commissioner may issue and enter a final order or make such final determination as he deems appropriate. The respondent shall be notified in writing by registered mail of the Commissioner's decision. (Title III, § 1282, as amended, § 14, Ch. 902, laws 1966).
- E. Any final order or determination or other final action by the Commissioner and the validity or reasonableness of any code, rule or regulation of the Board, shall be subject to review as provided in Article 78 of the Civil Practice Act. (Title III, § 1283-1, as amended, § 15, Ch. 902, laws 1966).

Petition may be made for relief from any code, rule or regulation of the Board or from any determination or order or other action which shall have been taken by the Commissioner or by any person acting in the name of the Board Commissioner. (Title III, § 1283-2, as amended, § 15, laws 1966).

V. BOARD REVIEW

- A. At the request of any aggrieved person, the Board shall review the Commissioner's determinations or orders. The availability of a Board review does not affect a person's right to seek review of a determination of the Commissioner under Article 78, Civil Practice Act. (§ 1283 (a), as added, § 16, Ch. 902, laws 1966).
- B. Verified petitions for relief shall be filed with the Board, specifying the material facts the petitioner relies on, the determination to be modified or reversed, the grounds for relief. Such petition may be made by any person or persons jointly or severally. (§ 1283 (a), as added, § 16, Ch. 902, laws 1966).
- C. The review proceeding must be instituted within two months after service of the determination or order. The Commissioner and his alternate shall not be allowed to vote in such proceedings. (§ 1283 (a), as added, § 16, Ch. 902, laws 1966).

VI. VIOLATIONS AND PENALTIES

- A. For failure to take such required measures within the time fixed a penalty not to exceed \$1000 for each violation and not to exceed \$200 for each day during which such violation continues may be imposed in a civil action. (Title V, § 1286-1, as amended, § 19, Ch. 902, laws 1966).
- B. For failure to take such required measures an action for an injunction must be brought by the Attorney General if the Commission so requests. (Title V, § 1287, as amended, § 20, Ch. 902, laws 1966).

VII. SCOPE AND CONSTRUCTION

- A. The provisions of Article XII-A (12-A) shall apply to all areas of the State. (Title VI, § 1293).
- B. The purpose of the article is to provide additional and cumulative remedies to prevent air pollution and not to abridge or alter rights of action or remedies now or hereafter existing (Title VI, § 1294, as amended by § 22, Ch. 902, laws 1966).
- C. Persons other than the State shall not acquire actionable rights by virtue of this article. (Title VI, § 1295).
- D. Any local laws, ordinances or regulations of any governing body of a county, city, town or village which are not inconsistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article shall not be superseded by it, and nothing in this article or in any code, rule or regulation which shall be promulgated pursuant to this article shall preclude the right of any governing body of a county, city, town or village to adopt local laws, ordinances or regulations which are not inconsistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article provided, however, that the exercise of such right by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town has local laws, ordinances or regulations consistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article. Any local laws, ordinances or regulations of a county, city, town or village which comply with at least the minimum applicable requirements set forth in any code, rule or regulation promulgated pursuant to this article shall be deemed consistent with this article or with any such code, rule or regulation. (Title VI, § 1297).

VIII. EFFECTIVE DATE

The Act is effective July 1, 1957, except that the provisions of Article 12-A of the Public Health Law, as added by this act, insofar as they confer power upon the air pollution control board to adopt and promulgate codes, rules and regulations for prohibiting and controlling air pollution and to enforce compliance therewith become effective July 1, 1959. (§ 2, Air Pollution Control Act).

2. Interstate Sanitation Commission 1/

I. GENERAL STATEMENT

In 1960, the 1936 Act which established the Interstate Sanitation Commission was amended to extend the power of the Commission so as to enable it to engage in activities with respect to air pollution problems between New York and New Jersey. The Commission, which had been established as the result of a Tri-State Water Pollution Control Compact between New York, New Jersey, and Connecticut was given new powers and duties, subject to the enactment of substantially similar legislation by New Jersey. The primary effort of the Commission under this Act is to be directed to air contaminant solids, liquids, or gases which are toxic, disagreeable or irritant, or which are destructive (§ 9-b).

II. ADMINISTRATIVE ORGANIZATION

A. Interstate Sanitation Commission

(1) Composition and Organization

The Interstate Sanitation Commission consists of five Commissioners from each State, each of whom is a resident voter of the State from which he is appointed (L. 1936, c.4, § 1, Art. II, § 1). Four New York Commissioners are appointed by the Governor with the advice and consent of the Senate, with the Commissioner of Health serving as the fifth. The Commissioners serve four year staggered terms without compensation (§ 1).

The Commission elects from its number a Chairman and Vice-chairman. A majority of its members from each State constitutes a quorum for the transaction of business, the exercise of any powers, or the performance of any duties, but no action is binding unless at least three members from each State vote in favor of it. It may meet at any time or place within the signatory States (§ 2).

A separate division of interstate air pollution, established within the Commission and governed solely by the Commissioners from New York and New Jersey, maintains separate financial accounts to reflect its direct and allocated costs and expenses in accordance with an accounting system set up by the full Commission (§ 9-b).

1/ Unless otherwise designated, citations refer to sections in Laws of New York, 1936, Ch. 3 as amended by Laws of New York, 1960, Ch. 823 and Laws of New York, 1966, Ch. 902.

(2) Other Services and Funds

In carrying out its air pollution functions, the Commission makes use of the services, facilities and information of existing State, local and Federal agencies whenever feasible and available. It may accept moneys, property, and other donations or gifts from any person, public, private or governmental, real or artificial.

(3) Employees and Advisors

The Commission appoints and at its pleasure removes or discharges officers and legal, clerical, expert, and other assistants as it requires and it fixes and determines their duties, qualifications, and compensation (§ 2).

(4) Rules and Regulations, Officers

The Commission adopts suitable by-laws and promulgates rules and regulations for its management and control. It may maintain one or more officers for the transaction of its business.

(5) Powers and Duties^{1/}

In pursuing its air pollution functions, the Commission is authorized:

- a. To conduct studies;
- b. To undertake research, testing, and development;
- c. To gather, exchange, and disseminate information and to cooperate in solving air pollution problems;
- d. To take samplings and to trace sources of air pollutants;
- e. To refer complaints to an appropriate enforcement agency or agencies of the States in which the sources are located and to which air pollutants are carried, along with such data and information as it may have obtained with respect to the nature, characteristics, source, path and effect of air pollutants;

^{1/} The water pollution aspects of the Commission's powers and duties are omitted.

- f. Upon the basis of studies and research, whenever appropriate:
 - 1. To make recommendations and reports to the Governors and legislatures of the participating States (§ 9-b).
 - 2. To recommend to the legislatures, air pollution control agencies and municipalities of the States the establishment of specific control and enforcement measures which may be necessary to abate air pollution in one State which endangers the health and welfare of people in another State;
 - 3. To join in a requirement upon the U. S. Secretary of Health, Education, and Welfare that he convene a conference pursuant to the Federal Clean Air Act and to participate in such conferences; and
 - 4. To recommend and assist in the establishment of air pollution monitoring systems and air pollution warning systems (§ 9-b, as amended, Laws 1966, Ch. 902, approved August 1, 1966).

III. SPECIAL PROVISIONS

A. Trade Secrets

No trade secret or secret process may be inquired into, whether with respect to one or more of the substances or one or more of the processes, operations, techniques or devices used in connection therewith. Wherever a trade secret or secret process is involved, activity is limited to identification of the device or facility from which the effluent discharged into the outer air derives, and the nature, rate and period of its emission.

B. Information Obtained

All information obtained from sampling, tracing, or other specific inquiry is confidential and except as may be essential for referring a complaint for enforcement and for any enforcement proceeding, may be disclosed or published only in such a way as will not identify a given substance, process, operation, technique or device with the physical location or identity of the source plant or facility, the product made or service performed, or the persons using the same.

C. COPY OF § 9-b

A printed copy of this section must be furnished on request to any person furnishing information to the Commission and, in case of an inquiry at a plant or facility, to the person then in charge thereof.

IV. EFFECTIVE DATE

The Act becomes effective when the State of New Jersey enacts legislation of substantially similar import and remains in effect so long as that legislation remains in force. Consent was given by the State of New Jersey to the expansion of the powers of the Commission by Ch. 105, Laws of 1961 (The Interstate Air Pollution Control Act). Consent of New Jersey to expansion of Commission powers as enacted by New York on August 1, 1966 not yet granted as of printing of this publication.

3. Motor Vehicle Pollution Control

Every motor vehicle manufactured or assembled after June 20, 1963, and registered in the State is required to be equipped with a crankcase ventilating system approved by the Commissioner of Health in accordance with standards promulgated by the Air Pollution Control Board, for the purpose of reducing the emission of pollutants into the atmosphere. The system must be maintained in good working order in continued conformity with standards promulgated by the Board (§ 28 (a) Vehicle and Traffic Law, as amended § 2, Ch. 856 and § 41, Ch. 902, Laws 1966).

Every motor vehicle known as a 1968 or subsequent model registered in the State shall be equipped with an air contaminant emission control system of a type approved by the Commissioner of Health in accordance with standards promulgated by the Air Pollution Control Commission. The system must be maintained in good working order in continued conformity with standards promulgated by the Board. "Air contaminant control systems" is defined to include, but is not limited to, exhaust control systems and gasoline evaporation control systems, but does not include crankcase ventilating systems. (§ 28 (b) Vehicle and Traffic Law, as amended § 3, Ch. 856 and § 42, Ch. 902, Laws 1966).

The Air Pollution Control Board may exempt or partially exempt any type or class of motor vehicle for which no practical control systems have been developed or necessary (§ 28 (c) Vehicle and Traffic Law, added § 42, Ch. 902, Laws 1966). In establishing standards and exemptions the Board shall give due consideration to applicable Federal laws and regulations. (§ 28 (d) Vehicle and Traffic Law, added § 42, Ch. 902, Laws 1966).

The Commissioner of Motor Vehicles, after consultation with the Air Pollution Control Board, empowered to establish regulations for the inclusion of inspections for the control of emissions of any substance by vehicles or engines and inspections of equipment, systems, or design features to reduce such emission. These regulations are to be promulgated when the Commissioner determines that it is technologically feasible and economically practical to conduct inspections of new vehicles' engines which are required by the Federal or State Motor Vehicle Air Pollution Law or the rules and regulations issued pursuant thereto, to meet emission, engine, equipment, system or design standards. (§ 301(c) Vehicle and Traffic Code, as added § 1, Ch. 856, Laws 1966).

4. New York Vehicle Pollution Control Corporation 1/

I. PURPOSE

The purposes of the Corporation are to encourage research and development of surface transportation methods and techniques through private funding which:

- a. Serve the public need to eliminate vehicular pollution;
- b. Serve the public need for new types of rapid transit and transportation which require technological organization beyond the scope of individual products or services, presently in operation;
- c. Are necessary for specialized or small volume production transportation methods and have not received organized attention. (§ 3).

II. COMPOSITION

The Corporation is to be a non-profit organization, governed by a Board of Directors consisting of the Commissioner of the Department of Health, the Commissioner of the Department of Motor Vehicles, the Director of the Office of Atomic and Space Development, the Director of the Office of Transportation and five other members appointed by the Governor by and with the advice and consent of the Senate for six year terms. (§ 4(a) and 7).

The Board of Directors shall provide for the holding of meetings with a majority of the Directors constituting a quorum for the transaction of business. (§ 4(c)). Directors receive no compensation for their services. (§ 4(d)).

The Board of Directors may elect an executive committee of not less than five members who, in intervals between meetings of the Board, may transact such business of the corporation as the Board may authorize. (§ 4(e)).

III. POWERS AND DUTIES

- A. Foster and support scientific and technological research and development in the State, through contracts or other appropriate means, in cooperation with the Federal government

1/ Citations refer to Chapter 788, Laws 1967.

the State government and the political subdivisions thereof, educational institutions, non-profit institutions and organizations, business enterprise and other persons concerned with scientific and technological research and development in the field of surface transportation;

- B. Sponsor and conduct conferences and studies, collect and disseminate information, and issue periodic reports relating to the purposes of this act;
- C. Initiate proposals of coordinating technical specifications, standards and rules before State and other governmental agencies and national standard setting organizations;
- D. Receive, hold, invest, reinvest and use, on behalf of the corporation and for any of its purposes, real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust. The Board of Directors, without regard to the limitations of section eleven of the State Finance Law relating to unconditional gifts but with the concurrence of the Director of the Budget, may acquire such property or moneys for such purpose by the acceptance of gifts, grants, appropriations, bequests or devises from any source, including but not limited to the Federal government and State governments and agencies;
- E. To sue and be sued in the name of the Corporation, process in any action or proceeding may be served upon the Secretary of State, as agent for the Corporation, in the manner provided by section three hundred six of the business corporation law;
- F. To have and use a corporate seal;
- G. Adopt rules and regulations, not inconsistent with law, governing any matters relating to the activities of the Corporation.
- H. Have and exercise all powers necessary or convenient to effect any or all of the purposes of the Corporation; (§ 5).
- I. No obligation of the Corporation shall be a debt of the State, and the Corporation shall have no power to make its obligations payable out of any property or moneys except those of the Corporation (§ 6).
- J. Make an annual report to the Governor, the Legislature and the Office of Transportation. (§ 10).

5. Tax Exemption

I. REAL PROPERTY TAXES AND SPECIAL LEVIES

Section 481 has been added to the Real Property Tax Law. It provides an exemption from taxation and special ad valorem levies for air pollution control facilities which were constructed or reconstructed in order to comply with the provisions of the Public Health Law and codes, rules, regulations, permits or orders issued pursuant to such law. The exemption applies to the increase in value of property by reason of the construction or reconstruction of the air pollution control facility.

A. Definition

"Air pollution control facilities" means facilities which remove, reduce, or render less noxious air contaminants emitted from air contamination sources (as defined in § 1277 of the Public Health Law) from a point immediately preceding the point of such removal, reduction, or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed primarily for salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

B. Procedure

In order to be entitled to exemption the facilities must be certified by the Commissioner of Health pursuant to § 1277 (a) of the Public Health Law. The exemption is applicable only to air pollution control facilities which were constructed or reconstructed after the effective date of the act (August 1, 1966). An exemption will be granted only upon application of the owner of the facility upon forms prescribed by the State Board of Health. The original of the application must be filed with assessor of the city, town, village or county having taxing powers, on or before the appropriate taxable status date. A copy of the application must be filed simultaneously with the State Board. If the assessor is satisfied that the facility is entitled to an exemption, he shall approve the application and he shall place the assessed value of any exemption granted on the portion of the assessment rolls provided for property exempt from taxation. The facility shall be exempt from taxation and special ad valorem levies.

C. Limitations

Section 481 of the Real Property Law is applicable only to the assessment roles of a county, city, town or village which has adopted a local law or a school district which has adopted a resolution. Local legislative bodies are empowered to adopt and amend local laws providing an exemption from taxation of air pollution control facilities located within the county, city, town or village. In counties and towns adopting such local laws, the exemption shall apply to taxes and special levies imposed for county or part county and town or part town purposes, respectively. In cities and villages adopting such local laws, the exemption shall apply to taxes imposed for city or village purposes, respectively. In the case of school districts, where taxes imposed for city school district purposes are not levied by such school districts, the local law adopted by the city shall apply to taxes imposed for city school district purposes. A school district which levies school taxes acting through its governing body, is empowered to adopt and amend resolutions authorizing an exemption from taxation, for school purposes, of air pollution control facilities located within such school district, provided, however, that a local law providing for such exemption from taxation for school purposes is adopted by each city or town wholly or partly within the school district where the facilities are located.(Real Property Laws, § 481, added by § 40, Chapter 902, Laws 1966).

II. FRANCHISE TAX ON BUSINESS CORPORATIONS

Section 208 of the Tax Law has been amended to provide a deduction from entire net income for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of air pollution control facilities (as defined in I. A. above). The deduction is allowed only with respect to depreciable tangible property located in the State and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement expenditures for which have been initiated on or after January 1, 1966. The air pollution control facilities must also have been certified by the Commissioner of Health as complying with the applicable provisions of the Public Health Law, the State Sanitary Code and regulations, permits or orders issued thereunder.

After expenditures for such air pollution control facility have been deducted if within ten years from the end of the taxable year in which the deductions were allowed the property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer must report such change in use in its report for the first taxable year during which it occurs and the tax commissioner may recompute the tax for the year or years for which such deduction was allowed and may assess additional tax. Where a deduction has been allowed on the basis of a temporary certificate of compliance, the tax may be recomputed and additional tax assessed if the taxpayer has failed to obtain a permanent certificate of compliance upon completion of the facilities (§ 208(9)(g) as added Chapter 178, Laws 1965 as amended § 27, 28, 29, Chapter 902, Laws 1966).

III. INCOME TAX

Section 612 of the Tax Law has been amended to provide for the subtraction from adjusted gross income of expenditures paid or incurred for the construction, reconstruction, erection or improvement of air pollution control facilities. The definitions, requirements and limitations follow those described in II. above (§ 612, Tax Law as added Chapter 178, Laws 1965, as amended § 30, 31, 32, 33, Chapter 902, Laws 1966).

Section 706 of the Tax Law has been amended to provide for an unincorporated business deduction of expenditures paid or incurred for the construction, reconstruction, erection or improvement of air pollution control facilities. The definitions, requirements and limitations follow those described in II. above (§ 706 Tax Law, as added Chapter 178, Laws 1965, as amended § 35, 36, 37, 38, Chapter 902, Laws 1966).

6. State Grants to Municipalities

Effective April 1, 1962, State grants amounting to 50% of the first million dollars expended in the fiscal year are authorized for cities of over one million population with air pollution control programs conducted by agencies other than the city health department pursuant to standards prescribed by the Commissioner of Health, including but not limited to, costs incurred for pensions, Federal old age and survivors insurance and health insurance. (§ 608(e), Public Health Law as amended by Ch. 737, L. 1962 and Ch. 427, L. 1965).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

North Carolina

1. North Carolina Water and Air Resources Act 1/

I. POLICY STATEMENT

The air resources of this State shall be prudently utilized in the best interest of the people. It is the purpose of this Article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable prevent injury to plant and animal life, prevent damage to property, foster maximum employment and the full industrial development of the State, and facilitate the enjoyment of the natural attractions of this State. (§ 143-211).

II. DEFINITIONS

- (1) 'Air contaminant' means particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof.
- (2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and for such duration as to be injurious or detrimental to health or human safety, animal or plant life, or property.
- (3) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.
- (4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant.
- (5) "Emission" means a release into the outdoor atmosphere of air contaminants.
- (6) "Air cleaning device" means any method, process or equipment which reduces, or renders less noxious air contaminants discharged into the atmosphere. (§ 143-213).

1/ Citations refer to Chapter 892, Laws 1967 rewriting Article 21 of Chapter 143 (Volume 3C - Replacement 1964).

III. ADMINISTRATIVE ORGANIZATION

Creates the Department of Water and Air Resources (§ 143-212), which shall be governed by a Board of Water and Air Resources. (§ 143-214). The Board shall consist of thirteen members, to be appointed by the Governor. The Board may in its discretion divide the functions and duties of the business and affairs under its jurisdiction into such divisions as it deems proper and may make each division or unit responsible for the discharge of its distinctive functions and duties. Board members are to be paid and meet at least quarterly. Authorizes the establishment of a water and air pollution control advisory council, to consist of thirteen members appointed by the Governor. (§ 143-214).

IV. POWERS AND DUTIES OF THE BOARD

The Board is to administer the act and is authorized to:

- (1) Promulgate rules for its internal organization and procedure;
- (2) Conduct investigations and require reports;
- (3) Appoint a Director to be its Administrative Officer, and an Assistant Director;
- (4) Accept and administer Federal and private funds; (§ 143-214)
- (5) To determine the degree of air pollution throughout the State and to develop a comprehensive air pollution abatement plan for the State;
- (6) To develop and adopt air quality standards;
- (7) To classify air contaminant sources and to require reports by operators of specified classes of sources;
- (8) To develop emission control standards;
- (9) To conduct or cooperate in the conducting of research;
- (10) To act as the official State Air Pollution Control Agency in matters covered by Federal statutes. (§ 143-215).

V. AIR QUALITY STANDARDS AND CLASSIFICATIONS

Prior to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Board shall give notice and conduct one or more public hearings with respect to any such proposed action. (§ 143-214.1(c)).

VI. CONTROL MEASURES; PERMITS

After the effective date applicable to any air quality or emission control standards established no person shall do any of the following things or carry out any of the following activities which would contravene or be likely to contravene such standards until or unless such person shall have received a permit from the Board and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Establish or operate any new contaminant source;
- (2) Build, erect, use or operate any new equipment which may result in the emission of contaminants or which is likely to cause pollution;
- (3) Alter or change the construction or method of operation by any existing equipment or process from which contaminants are or may be emitted; and
- (4) Enter into a contract for the construction and installation of any air cleaning device, or allow or cause such device to be constructed, installed, or operated. (§ 143-215.1(b)).

The Board shall act upon all applications for permits so as to effectuate the purposes of this section, by preventing, so far as reasonably possible, any pollution or any increased pollution of the air of the State from any additional or enlarged sources. The Board shall have the power to grant a conditional or temporary permit and to modify or revoke any permit. Any person whose application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Board. (§ 143-215.1(c)).

VII. ABATEMENT OF EXISTING POLLUTION; COMPLIANCE

A After the effective date established for any air quality standards or emission control standards, no person shall discharge any air contaminants into the outdoor atmosphere of the State in violation of, or except upon compliance with the terms of, any special order, or other appropriate instrument, issued by the Board. (§ 143-215.2).

B. Special Orders

The Board is empowered, after the effective date of any air quality standards or emission control standards, to issue a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Board deems necessary and feasible in order to alleviate or eliminate the pollution. No such special order shall be issued against a person, or, if issued, the time allowed for compliance by such person shall be extended to the extent necessary, where the Board concludes, after investigation, or where it is demonstrated after a hearing, that it is impossible or, for the time being, not feasible for such person to correct or eliminate the activities causing or contributing to any such pollution. Such a situation shall be deemed to exist where no adequate or practical method of disposal, control, or treatment is known for the particular air contaminant in question or where the cost of any such known method of disposal, control or treatment is unduly burdensome in comparison with the pollution abatement results which can be achieved, or where a known method of disposal, abatement, or treatment cannot be adopted because of financial inability (due to statutory restriction on borrowing power or otherwise), or where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal, abatement, or treatment until further opportunity is given for the discovery of more effective methods. The burden of proof as to any of such conditions or any other conditions alleged to exist as a reason for the nonissuance of a special order or for extension of the time of compliance therewith shall be upon the person alleging such conditions. (§ 143-215.2(b)).

North Carolina -- Continued

No special order shall be issued by the Board except after a hearing. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order. (§ 143-215.2(c)).

Special orders may be appealed from by the person against whom they are issued. (§ 143-215.2(d)).

When an order of the Board to abate an air pollution problem is served upon a municipality, upon a metropolitan sewerage district, or upon a sanitary district, the governing Board of such municipality, metropolitan sewerage district, or sanitary district shall, unless said order be reversed on appeal, proceed to provide funds, using any or all means necessary and available therefor by law, by issuance of bonds secured by the full faith and credit of such municipality or district or by issuance of revenue bonds or otherwise, for financing the cost of all things necessary for full compliance with said order and shall thereby comply with said order: Provided, nothing herein shall be construed to supersede or modify the provisions of the Local Government Act or of the Revenue Bond Act of 1938 with respect to approval or disapproval of bonds by the Local Government Commission and to the sale of bonds by said Commission. (§ 143-215.2(f)).

VIII. VOLUNTARY PROJECTS

Prior to the effective date established for any air quality standards or emission control standards, any person who is discharging or who proposes to discharge any air contaminants into the air of the State may submit to the Board proposed plans for the installation of air cleaning devices, with respect to such air contaminants and apply to the Board for approval thereof. Such applications shall be in such form as the Board may prescribe in its rules of procedure, shall describe in precise detail the nature and volume of air contaminant which the applicant discharges or proposes to discharge, and shall contain or be supplemented by any information or plans and specifications whatsoever which the Board may request. The applicant may submit the opinion of any independent expert as to the probable effectiveness and results of such air cleaning devices and the Board may request that the opinion of experts or additional experts be obtained in any case

where it considers the same necessary, the expense in connection therewith to be borne by the applicant. Such an application may be filed by any person irrespective of whether any proceedings involving such person have been taken or are pending under any other provision of this article. (§ 143-215.2(g)).

The Board shall make a thorough investigation of any application filed pursuant to this section before acting thereon, and may require the applicant to submit any statements in support of such application under oath. The Board shall not issue a certificate of approval to any applicant, unless it finds that the proposed air cleaning devices, if installed and operated in accordance with the plans submitted to the Board:

- (1) Will provide an effective method of preventing or abating actual or potential pollution of the air into which the applicant is discharging or proposes to discharge any air contaminants; and
- (2) Will require such expenditure by the applicant, in relation to the air cleaning problem to be remedied and the size and nature of the applicant's activities resulting in such problem, that it is fair to give the applicant reasonable protection against being required by law, at some later date, to make further capital expenditures in connection with the same air cleaning problem.
(§ 143-215.2(h)).

If the Board approves the proposed air cleaning devices, with any modifications it may recommend, it shall have the power to issue to the applicant a certificate of approval which shall have the following effect and be subject to the following limitations:

- (1) Such certificate shall give the person to whom it is issued binding assurance that, for the period specified in the certificate and so long as such person complies with all the terms of the certificate, he will not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for the purpose of alleviating or eliminating any pollution or alleged pollution resulting from the air contaminants, which such person is discharging into the atmosphere.

North Carolina -- Continued

- (2) Such certificate shall be effective from the date of its issuance for such period of time as the Board deems fair and reasonable in the light of all the circumstances.
- (3) Such certificate shall provide that it shall become void unless the applicant completes the proposed air cleaning devices within a time limit specified in such certificate, and unless the proposed air cleaning devices are constructed and at all times operated in accordance with the plans and specifications approved by the Board pursuant to this section.
- (4) Such certificate shall be effective only with respect to the nature and volume of air contaminants described in the application or in the certificate itself after treatment by the proposed treatment works or air cleaning devices.
- (5) Such certificate shall inure to the benefit of any successors or assigns of the applicant subject to the same conditions as are applicable to the applicant.
- (6) Such certificate may impose any other limitations on its effectiveness as the Board may deem necessary or appropriate. (§ 143-215.2(i)).

The Board by rules of procedure, not inconsistent with this article, may specify any further rules applicable to the granting of certificates of approval pursuant to this section. Any action by the Board on an application for a certificate of approval is a matter of discretion and consequently there shall be no right to a hearing nor to an appeal with respect to any refusal of the Board to grant any certificate of approval, or to the terms thereof. The Board shall have power to entertain and act on applications for modification of any certificate of approval. The Board shall have no power to revoke or modify a certificate of approval which has been issued, except by agreement, or except where the terms of such certificate have been violated or have not been fulfilled. (§ 143-215.2(j)).

Any person who installs an air cleaning device for the purpose of alleviating or eliminating air pollution in compliance with the terms of, or as a result of conditions specified in, a permit issued pursuant to § 143-215.1 or a special order or a final decision of the Board or a court rendered decision pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Board or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order or decision or the conditions of such permit become finally effective, if the treatment works or air cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order or decision and complies with any other terms thereof. (§ 143-215.2(k)).

IX. EMERGENCY

The Board shall declare an emergency when it finds that a generalized condition of air pollution is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition exists and that it creates an emergency requiring immediate action, the Assistant Director shall order persons causing or contributing to such pollution to reduce or discontinue immediately the emission of air contaminants.

In the absence of a generalized condition of air of the type referred to above, if the assistant Director finds that the emissions from one or more air contaminant sources is causing imminent danger to human health and safety, he may with the approval of the Director and the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or to take such other measures as are necessary. (§ 143-215.3(a)(12)).

X. INVESTIGATIONS

The Board may conduct such investigations as it may reasonably deem necessary to carry out its duties and enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air cleaning devices, and to require written statements or the

filing of reports under oath, with respect to pertinent questions relating to the operation of any air cleaning device, sewer system, disposal system or treatment works: Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (§ 143-215.3(a)(2)).

XI. HEARINGS

All hearings shall be before the Board or its authorized agent or agents, and shall be open to the public. The Board shall have the power to issue subpoenas and subpoenas duces tecum. (§ 143-215.3(a)(5)).

Following any hearing, the Board shall afford the parties thereto reasonable opportunity to submit proposed findings of fact and conclusions of law and any brief in connection therewith.

Hearing procedures are to correspond to those of a court, and conclusions are to be based on the whole record. Parties are to be permitted to submit proposal findings and conclusions and briefs. (§ 143-215.4(d)).

XII. JUDICIAL REVIEW

Any person against whom any final order or decision has been made except where no appeal is allowed shall have a right of appeal. The trial shall be de novo. (§ 143-215.5).

Any person discharging contaminants into the air which are the subject matter of the proceedings, shall have the right to intervene in this pending proceeding and shall have the same right as any other party to introduce evidence as to the reasonableness of the order as defined.

XIII. VIOLATIONS AND PENALTIES

After the effective date for the application of any air quality standards or emission control standards it shall be a violation of this article for any person:

- (1) To perform any of the acts set forth herein without first obtaining a permit, or to perform any such acts in disregard of the terms of such permit;
- (2) To fail to comply with the terms of any special order issued by the Board. (§ 143-215.6(a)).

Any person who shall be adjudged to have violated this article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than \$100 nor more than \$1,000 for each violation. (§ 143-215.6(b)).

XIV. INJUNCTIVE RELIEF

Upon violation of any of the provisions of this article, the Director or the Assistant Director of the Board may, either before or after the institution of proceedings for the collection of the penalty imposed herein, institute a civil action for injunctive relief to restrain the violation and for such other or further relief as the court shall deem proper. (§ 143-215.8).

2. Local Air Pollution Control Programs

The Board shall review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this article and any applicable standards and rules and regulations pursuant thereto. The Board shall certify any local program which:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by this article, and the standards and rules and regulations issued pursuant thereto;
- (2) Provides for adequate enforcement of such requirements;
- (3) Provides for an adequate administrative organization, staff, financial and other necessary resources;
- (4) Is approved by the Board. (§ 143-215.3(a)(11)).

Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local program is established or proposed may make application for, receive, administer and expend Federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Board. (§ 143-215.3(a)(11)(a)(7)).

If the Board finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic or meteorologic considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the Board may determine the boundaries within which such program is necessary and require such areawide program as the only acceptable alternative to direct State administration. (§ 143-215.3(a)(11)(c)).

If the Board has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this article, the Board shall, upon due notice, conduct a hearing on the matter and after hearing the Board may require corrective measures on penalty of having the local agencies certification rescinded. (§ 143-215.3(a)(11)(d)).

North Carolina -- Continued

If the Board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located. (§ 143-215.3(a)(1)(d)).

3. Tax Exemptions

In computing net income there shall be allowed in lieu of any depreciation allowance, at the option of the taxpayer, an allowance with respect to a 60 month amortization of the cost of any air cleaning device constructed or installed before January 1, 1955, but only with respect to the undepreciated value of such plants or equipment, (§ 105-147(13)) and only upon the Board's certification;

THE ACT:

Exempts from real property taxation real property, or so much thereof, which is used exclusively for air cleaning or air pollution abatement facilities designed to abate, reduce, or prevent air pollution. (§ 105-296(11)) and so certified by the Board;

Exempts from personal property taxation air cleaning devices and equipment primarily designed to abate, reduce, or eliminate air pollution, and so certified by the Board. (§ 105-297(16)); and

§ 105-29 is amended to prevent increases in real estate tax evaluations as a result of the installation of air cleaning devices certified by the Board.

Reserves for the entire cost of air cleaning devices may be treated as a deductible liability upon certification of such devices by the Board that the equipment has been installed and that the equipment complies with Board regulations with respect to such equipment and that the equipment is being effectively operated. To qualify under this section, the equipment must be or have been installed after January 1, 1955. (§ 105-122(b)).

In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air cleaning device purchased or constructed and installed which reduces the amount of air pollution into the outdoor atmosphere upon condition that the corporation claiming such deduction shall furnish a certificate from the Board of Water and Air Resources certifying that said Board has found as a fact that the air cleaning device has actually been constructed and installed and that such equipment complies with Board requirements, that such equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document or approval issued by the Board of Water and Air Resources and that the primary purpose thereof is to reduce air pollution resulting from the emission of air contaminants. The deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955. (§ 105-122(d)).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

North Dakota 1/

A nuisance is defined, inter alia, as unlawfully doing an act or omitting to perform a duty, which act or omission annoys, injures or endangers the comfort, repose, health or safety of others (§ 42-0101). The remedies against a public nuisance are:

- (1) Indictment,
- (2) Filing an information,
- (3) Bringing a criminal action before a county justice who has authority to bind defendant over to the district court,
- (4) Civil action or,
- (5) Abatement (§ 42-0107).

The Attorney General, his assistant, the State's Attorney, or any citizen of the county where a common nuisance exists or is maintained may bring an action in the name of the State to abate and perpetually enjoin the nuisance (§ 42-0201).

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (§ 42-0115).

The remedies against a private nuisance are:

- (1) A civil action or,
- (2) Abatement (§ 42-0103).

1/ Citations refer to North Dakota Century Code.

North Dakota -- Continued

When it is necessary for the protection of the public health to abate or remove any nuisance, source of filth, or cause of sickness found on private property, the local board of health shall cause a notice to be served on the owner or occupant thereof requiring him to remove the same at his own expense within a reasonable time, not to exceed twenty-four hours. If the owner or occupant refuses or neglects to comply with such notice or if the nuisance, source of filth, or cause of sickness exists on the property of nonresident owners or upon property the owners of which cannot be found, the board of health shall cause the nuisance, source of filth, or cause of sickness to be removed or destroyed under its direction, at the expense of the county, city, village, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done (§ 23-05-04).

Whenever a local board of health deems it necessary for the preservation of the public health to enter any building within its jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into such building, any member of the board may make complaint under oath to a county justice within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. The justice thereupon shall issue a warrant directed to the sheriff or other peace officer commanding him to destroy, remove, or prevent between the hours of sunrise and sunset, the nuisance, source of filth or cause of sickness, under the direction of such members of the local board of health as accompany him (§ 23-05-06).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Ohio 1/

1. Air Pollution Control

I. DEFINITIONS

"Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor or odorous substances, or any combination thereof.

"Air pollution" means the presence in the ambient air of one or more air contaminants or any combination thereof in sufficient quantity and of such characteristics and durations as to injure human health or welfare, plant or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property.

"Ambient air" means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts which surrounds human, plant, or animal life, or property.

"Emission" means the release into the outdoor atmosphere of an air contaminant.

"Person" means the state or any agency thereof, any political subdivision, or any agency thereof, public or private corporation, individual, partnership, or other entity. (Sec. 3704.01)

II. ADMINISTRATIVE ORGANIZATION

Establishes in the Department of Health an Air Pollution Control Board composed of the Director of Health, the Director of Development, and three members, representative of municipal corporations, industry and agriculture, appointed by the Governor with the advice and consent of the Senate. Appointed members shall serve for a term of three years.

Each appointed member of the Board shall serve without compensation but shall be reimbursed for reasonable expenses .

The Director of Health or his authorized representative shall be chairman of the Board. The Director of Development or his authorized representative shall be vice-chairman of the Board and in the absence or disability of the chairman he shall have the authority to perform the duties of the chairman.

1/ Citations refer to the Ohio Revised Code Annotated.

Three members of the Board constitute a quorum. The Board shall hold at least one regular meeting in each quarter of each calendar year. Special meetings of the Board may be called by the chairman.

The Director of Health may exercise in the name of the Board all the powers of the Board except the power to adopt, modify, or repeal regulations, issue, revoke, or modify orders, or modify or revoke permits. (Sec. 3704.02)

III. POWERS AND DUTIES

- (1) Develop programs for the prevention, control, and abatement of air pollution;
- (2) Advise, consult, and cooperate with any governmental or private agency in the furtherance of this Act;
- (3) Encourage, participate in, or conduct studies, investigations, and research, relating to air pollution, and the causes, prevention, control, and abatement thereof;
- (4) Adopt, modify, and repeal regulations for the prevention, control, and abatement of air pollution, prescribing ambient air quality standards for various areas of the state;
- (5) Promulgate regulations for the prevention, control, and abatement of air pollution, prescribing for various areas of the state emission standards for air contaminants for the purpose of achieving compliance with air quality standards applicable to such area;
- (6) Variances

Issue, revoke, modify, or deny permits for emissions in excess of the applicable emission standards adopted by the Board. In issuing, revoking, modifying, or denying such permits the Board shall hear and give consideration to evidence that:

- a. Compliance with such standards is impractical because of conditions beyond control of the applicant.
- b. Compliance with such standards would be technically infeasible or economically unreasonable.

- c. The emissions of the applicant for which a permit is requested have little effect on ambient air quality because of topography, direction and velocity of prevailing winds, height of emission source, or other factors.

In issuing such permits, the Board may also order the person to whom the permit is issued to take such action within such time as is appropriate and reasonable to prevent, control, or abate his existing emissions of air contaminants. The Board shall specify in such permits that the permit is conditioned upon the right of authorized representatives of the Board to enter upon the premises of the person to whom the permit has been issued for the purpose of determining compliance with this Act, rules and regulations adopted thereunder, or the terms of a permit, order, or other determination of the Board.

- (7) Require the person responsible for any source of emission considered as being a source of or contributing to air pollution in an area where ambient air standards are being exceeded to file reports with the Board containing information which is reasonably available as to location, size and height of emission outlets, and the rate, duration, and composition of emissions;
- (8) Establish and operate a program for monitoring air pollution;
- (9) Adopt, modify, repeal, and promulgate rules and regulations governing the procedure of the Board with respect to hearings, filing of reports, the adoption of ambient air quality standards, emission standards, the issuance of permits, and all other matters relating to procedure;
- (10) Adopt, modify, and repeal regulations requiring the submission of plans and specifications for that portion of proposed installations which may cause air pollution;
- (11) Inspections:

Enter upon private or public property, including improvements thereon, for the purpose of determining if there are any emissions from such premises, and if so, to determine the sources and extent of such emissions;
- (12) Accept and administer grants from the Federal Government and from any other source, public or private, for carrying out any of its functions;

- (13) Obtain necessary scientific, technical, and laboratory services;
- (14) Establish advisory boards;
- (15) Technical and other services shall be performed, insofar as practical, by personnel of the Department of Health;
- (16) Certify to the U.S. government or any agency thereof that an industrial air pollution facility is in conformity with the state program or requirements for control of air pollution whenever such certificate is required for a taxpayer pursuant to any Federal law or requirement;
- (17) Develop a plan to control air pollution resulting from state-operated facilities and property. (Sec. 3704.03).

IV. REGULATIONS AND PERMITS

The adoption, modification, and repeal of regulations and the issuance, revocation, modification, and denial of permits shall be in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code, except that the notice of appeal required under section 119.11 shall not stay the effective date of any regulation. Such a stay may be granted by the court for good cause but shall be effective only as to the party appealing the order adopting, modifying, or repealing such regulations. (Sec. 3704.04).

V. PROHIBITIONS

- A. No person shall cause, permit, or allow emission of an air contaminant in violation of a standard for emission of such contaminant adopted by the air pollution control board unless such person is the holder of a permit, permitting the emission of such contaminant in excess of such standard.
- B. No person who is the holder of a permit shall cause, permit, or allow emission of an air contaminant or contaminants listed therein in violation of the conditions of such permit or fail to obey an order of the Board.
- C. No person shall fail to submit reports as may be required.
- D. No person shall refuse entry to a member of the Board or its authorized representative as provided in this Act, or hinder or thwart such person in making such investigation.

E. No person shall fail to submit plans and specifications as required by this Act. (Sec. 3704.05).

VI. PENALTIES; INJUNCTIVE RELIEF

Whoever violates any provision of this Act shall be fined not more than five hundred dollars. Each day such violation continues after a conviction for a violation is a separate offense. (Sec. 3704.99).

The attorney general, upon the request of the Air Pollution Control Board, shall prosecute any person who violates this Act.

The attorney general, upon request of the Board, shall bring an action for an injunction or any other appropriate proceedings in any court of competent jurisdiction against any person violating or threatening to violate this Act. The court in which an action for injunction is filed has jurisdiction to grant injunctive relief. The court shall give consideration to the physical and economic feasibility of complying with such standards as may be applicable and shall have jurisdiction to enter such judgment, as the public interest and equities of the case require. (Secs. 3704.99 & 3704.06).

VII. CONFIDENTIALITY

Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the Air Pollution Control Board or other persons acting under this Act are confidential and shall not be disclosed except when such records or information are necessary to sustain an injunction or to refuse a permit during a public hearing by the Board. (Sec. 3704.08).

VIII. SCOPE AND CONSTRUCTION

Nothing contained in this Act shall be construed as authorizing the Air Pollution Control Board to make any rule, regulation, determination, or order with respect to the condition or quality of the outdoor atmosphere within the boundaries of the industrial property within which the air contaminants in question are or may be emitted or which affect the relations between employers and employees or which supersede or limit the applicability of any law or ordinance relating to industrial health, safety, or sanitation within the boundaries of the industrial property. (Sec. 3704.07).

IX. PRIVATE CIVIL ACTIONS

Determinations made by the Air Pollution Control Board or the courts or other persons under this Act shall not be used as evidence in civil actions nor create any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state, and this Act does not create, enlarge, or abrogate existing private rights. (Sec. 3704.09).

X. SAVINGS CLAUSE

This Act does not limit the authority a political subdivision of the State has to adopt and enforce ordinances or regulations relative to the prevention, control, and abatement of air pollution. (Sec. 3704.11).

2. Research and Local Assistance ^{1/}

I. GENERAL STATEMENT

By statute approved June 10, 1957, section 3701.04.1 was added to Chapter 370 (Entitled "Department of Health") of the Ohio Revised Code relative to the conduct of air pollution research by the department of health and assisting political subdivisions in the abatement of air pollution.

"Atmospheric pollution" is defined as "the presence, in the out-of-door atmosphere, of substances which are injurious to humans, crops, or animals" (§ 3701.04.1).

II. ADMINISTRATION

The duties and powers set forth in the statute are assigned to the director of health (§ 3701.04.1).

III. POWERS AND DUTIES

The director of health is required to:

- A. Maintain a laboratory to provide services necessary for the furtherance of air pollution abatement.
- B. Develop methods of study of atmospheric pollution and conduct research within the state.
- C. Advise, consult, and cooperate with other agencies of the State, the Federal government, other States, interstate agencies, political subdivisions, and industries in furtherance of atmospheric pollution prevention and abatement.
- D. Encourage, participate in, or conduct studies and research relating to the prevention of atmospheric pollution.
- E. Collect and disseminate information relating to atmospheric pollution and the prevention, control, and abatement thereof.
- F. Accept and administer grants from the Federal government or other sources, public or private, for carrying out any of these functions (§ 3701.04.1).

^{1/} Citations refer to Page's Ohio Revised Code Annotated.

3. Cooperative Control

The Board of County Commissioners and the legislative authority of any municipal corporation may enter mutual agreements whereby the latter shall provide the county with personnel, equipment and other services for the control of air pollution. Pursuant thereto, a municipal corporation may exercise any authority in behalf of the Board which the Board itself might so exercise. Effective September 27, 1963 (§ 307.151, S. Bill No. 223, Reg. Session 1963).

4. Tax Exemption

Upon application, notice, hearing (if requested), and approval, the Tax Commissioner may grant a revocable and modifiable pollution control certificate for a proposed air pollution control facility. This certificate shall entitle the owner of such facility to certain tax exemptions for that portion of the facility used exclusively for air pollution control. Appeal may be made from the decision of the Tax Commissioner to the Board of Tax Appeals, as provided in § 5707.02. The certificate shall continue in effect indefinitely unless revoked. Reasons for revocation are: Obtaining a certificate by fraud or misrepresentation; failure to build, install or acquire the proposed facility; ceasing to use the facility for the primary purpose of pollution control. If a certificate is revoked because obtained by fraud or misrepresentation, all taxes which ordinarily would have been payable shall be assessed, with maximum penalties applicable thereto.

No certified facility (or certified portion thereof) shall be considered: An improvement on the land on which it stands, for the purpose of real property taxation; as "used in business" for the purpose of personal taxation; as an asset in determining the value of its issued and outstanding shares or the value of its Ohio property for the purpose of the franchise tax. Further, no transfer of property to be incorporated into a certified facility shall be subject to sales or use taxes (§§ 5709.20-5709.26, H. Bill No. 26, Reg. Session 1963, effective October 14, 1963).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Oklahoma 1/

I. POLICY STATEMENT

The intent and purpose of this Act is to provide the means to achieve and maintain a reasonable degree of atmospheric purity necessary for the protection and enjoyment of human, plant or animal life and property consistent with and limited by generally accepted social standards and requirements, desired employment and industrial development, area conditions, and the availability of economic and feasible controls, and with the maximum cooperation and conciliation with all concerned. (§ 2).

II. DEFINITIONS

"Air pollution" is the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life and property, excluding, however, all conditions pertaining to employer-employee relationships. (§ 2(B)g).

"Air contaminants" means the presence in the outdoor atmosphere of fumes, aerosol, mist, gas, smoke, vapor, particulate matter, or any combination thereof which create a condition of air pollution. (§ 2(B)h).

III. ADMINISTRATIVE ORGANIZATION

Designates the State Department of Health as the administrative agency for this Act for the State. (§ 2(c)). Creates an Air Pollution Council, to consist of seven members, appointed by the Governor, (§ 2(E)), who receive fifteen dollars per diem. (§ 2(E)d). The Air Pollution Director in the Department of Health is to be appointed by the Department Commissioner to act as the executive officer of the Council. (§ 2(G)).

1/ Citations refer to Chapter No. 80, Laws 1967.

IV. POWERS AND DUTIES

- A. The Department shall assist and cooperate with other groups interested in and affected by air pollution and is empowered to:
- (1) Prepare and develop a general plan for proper air quality management;
 - (2) Advise, consult and cooperate with other agencies of the State, towns, cities, and counties, industries, other States and the Federal government, and with affected groups in the prevention and control of new and existing air contamination sources;
 - (3) Encourage and conduct studies, investigations and research;
 - (4) Collect and disseminate information;
 - (5) Encourage voluntary cooperation;
 - (6) Represent the State in any and all matters pertaining to interstate compacts;
 - (7) Provide technical, scientific, or other services necessary to carry out this Act;
 - (8) Accept and administer grants or other funds or gifts for the purpose of carrying out any of the functions of this Act;
 - (9) Bring appropriate court action to enforce final orders or determinations including obtaining injunctions or other proper relief. (§ 2(C)).
- B. The State Board of Health is authorized, after hearing and approval by the Council, to adopt, amend or repeal rules and regulations for the control and abatement of air pollution and establishment of health and safety tolerance standards for discharge of contaminants and such additional rules and regulations as deemed necessary to protect the health, safety and welfare of the public (§ 2(D)).

C. The Air Pollution Council shall have the following powers and duties:

- (1) Recommend to the Board rules and regulations or amendments thereto for the controlling or prohibiting of air pollution and the establishment of health and safety tolerance for discharge of contaminants; and
- (2) Hold hearings, and in connection therewith, compel the attendance of witnesses, receive evidence and other things deemed necessary. (§ 2(F)).

V. PROCEDURES

A. Complaints and Investigations

In case any written complaint shall be filed with the Department and if, the Director or the Council, shall have cause to believe that any person is violating any code, rule or regulation, shall cause an investigation thereof to be made by the Director. (§ 2(G)e; § 2(H)). The Director may inspect private or public property, not residences, at reasonable times if he has reasonable cause to believe the condition being investigated is an air pollution source. (§ 2(H)b).

B. Hearings

When, in the opinion of the Director, an investigation discloses a violation, he shall by conference, conciliation and persuasion endeavor to the fullest extent possible to eliminate such violation. (§ 2(I)a).

In case of failure by conference, conciliation and persuasion to correct or remedy the violation the State Commissioner of Health may cause a written notice to be served upon the person complained against, together with a copy of the formal complaint. The complaint shall specify the provisions of the Act or regulation or order alleged to be violated, and shall order that necessary corrective action be taken. Any such order shall become final and enforceable unless the person or persons named therein request a hearing before the Council. In lieu of such order, the Council may require that an alleged violator appear before it and answer the charge complained of. (§ 2(I)(a)). In proceedings before the Council, the Air Pollution Director has the burden of proving violations. (§ 2(I)(c)).

All hearings shall be held before at least four Council Members. (§ 2(I)f).

VI. VARIANCES

The Council may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any provisions of this Act, or any rule, regulation or requirement established thereunder, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people or to public health. Variances shall be granted for a time specified by the Board, but not to exceed one year. (§ 2(J)).

A person seeking a variance is to file a petition with the Director, who is to investigate and make recommendations to the Commission. (§ 2(J)(a)).

VII. PENALTY

Any person who violates any of the provisions of this Act or the rules or regulations adopted pursuant to the Act shall be guilty of a misdemeanor. Each day a violation occurs constitutes a separate violation. (§ 2(L)).

VIII. EFFECTIVE DATE

April 18, 1967

2. Local Programs

Nothing in this Act shall prevent cities and towns from enacting ordinances or codes with respect to air pollution which will not conflict with the provisions of this Act and which contain provisions not lower than those fixed by the operation of this Act, and nothing in this Act shall prevent cities and towns from summarily abating public nuisances as now provided by law. (§ 3).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Oregon 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

A. Summary

In 1961, the Oregon legislature enacted a comprehensive Air Pollution Control Act to be administered by the Sanitary Authority of Oregon. Regulations issued by the Sanitary Authority under the 1959 Act (§ 449.030, O.R.S.) are in continued effect, insofar as they do not conflict with the later statute, until amended or new regulations are adopted, and in no event more than six months from the effective date of the statute (May 22, 1961).

It is the declared policy of the State to maintain such a reasonable degree of air purity that the least possible injury be done to human, plant or animal life and to property and consistent with the economic and industrial well-being of the State. The control program shall be undertaken in a progressive manner and each of its successive objectives sought to be accomplished by a maximum of cooperation and conciliation. The purpose of the Act is to control and abate existing air pollution and prevent new air pollution under a program consistent with the stated policy.

B. Definitions

"Air contaminant" means a "dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof" (§ 949.760, O.R.S.).

"Air pollution" means "the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant, or animal life or to property or which unreasonably interfere with enjoyment of life and property throughout the State or throughout such area of the State as shall be affected thereby" (§ 449.760 O.R.S.).

1/ Citations refer to Oregon Revised Statutes.

"Air contamination" means "the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution". (§ 449.760 O.R.S.).

"Area of the State" means "any city or county or portion thereof or other geographical area as may be designated by the Sanitary Authority" (§ 449.760, O.R.S.).

II. ADMINISTRATIVE ORGANIZATION

A. Sanitary Authority--Membership

The powers and duties prescribed by the Act are vested in the Sanitary Authority. The Authority is a division within the State Board of Health and is composed of seven members: The State Health Officer, the State Engineer, a member of the State Game Commission, a member of the State Fish Commission and three members appointed by the Governor from the general public for a four-year term.(§ 449.015, 449.020). The State Sanitary Engineer is Secretary of the Authority.(§ 449.025).

B. Duties and Powers

(1) The State Sanitary Authority is directed to:

- a. Develop a comprehensive plan for control or abatement of existing air pollution and for prevention of new air pollution, recognizing varying needs of different areas;
- b. Encourage cooperative activities and the formulation and execution of plans for air pollution control, air pollution agencies, associations, industries, etc.;
- c. Cooperate with Federal agencies, and receive and spend funds from Federal public or private agencies for air pollution control functions;
- d. Conduct studies, demonstrations, research, and educational programs relating to air pollution control and provide technical advisory services to local communities; and
- e. Enforce statutes relating to air pollution. (§ 6).

(2) The authority has power to:

- a. Establish areas of the State and prescribe air purity standards for the degree of air contamination or pollution permitted therein. Such standards shall take into account such factors as: The quantity and nature of air contaminants; topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the area, the availability and economic feasibility of air-cleaning devices, effect on human health and enjoyment of life and danger to property from air contaminants, the effect on industrial operations of remedial measures and other applicable standards;
- b. Establish air quality standards for the State or an area, establishing the maximum amount of air pollution permissible in various kinds of air contaminants from different sources or classes thereof, after public hearing before making any specific order concerning air pollution in an area if such standards can be established. (§ 449.785, O.R.S.). Notice of public hearing on air quality standards must be published prior to the hearing. Oral and written objections may be submitted and the standards shall be established within 90 days after the hearing. Standards are deemed general regulations of the Authority. (§ 449.790).
- c. Require the submission of plans for any air-cleaning device but cannot require any particular means to meet the standards (§ 449.795).
- d. Adopt rules and regulations effective Statewide or in areas to control air pollution. (§ 449.800, O.R.S.).

- e. Conduct hearings, investigations, subpoena witnesses, etc., and make findings of fact and determinations. (§ 449.800, O.R.S.).
- f. Enforce penalties, except that no penal action may be taken against State, its agencies or local governments or their employees (§ 449.800, O.R.S.).
- g. Compel compliance with rules by initiating judicial proceedings. (§ 449.800, O.R.S.).
- h. Enter and inspect, during operating hours and after four hours' notice, when requested, any premises to investigate compliance. Trade process information obtained shall be kept confidential and not made part of hearing public record. Analysis reports of air samples taken on premises shall be provided to the person concerned (§ 449.800).
- i. Require production of pertinent books and papers. (§ 449.800, O.R.S.).

III. ENFORCEMENT PROCEDURES

A. Investigation

On complaint or on its own motion, the Authority shall investigate any alleged violation of regulations and orders, and if it finds such violation exists, endeavor to eliminate the cause of air pollution by conference, conciliation and persuasion. (§ 11; § 449.815, O.R.S.).

B. Hearing

If voluntary compliance is not obtained, the Authority shall serve a complaint setting forth in detail the conditions complained of, together with notice of public hearing. The respondent may appear or file written answer. The burden of proof is on the Authority, which shall, after due consideration of the evidence make an appropriate order or determination in accordance with O.R.S. Chapter 183. (§ 449.815, O.R.S.).

C. Judicial Review

All orders, rules, regulations and determinations are subject to judicial review by any party to the original proceeding or by any person aggrieved thereby, within one year after they become final. (§ 449.805, O.R.S.).

D. Injunctive Relief

The authority may sue for an injunction to prevent violation of specific final orders and to compel compliance (§ 449.820, O.R.S.).

E. Emergency Relief

Whether or not administrative proceedings have begun, the Authority may bring an action to abate or restrain threatened or existing pollution when such pollution creates an emergency requiring immediate action to protect the public health, safety or welfare. No temporary restraining order, temporary injunction or abatement order shall be granted unless the defendant has an opportunity to be heard thereon pursuant to a show cause order served as a summons. Cases filed under these provisions shall be preferred on the civil docket except over cases given equal preference by statute (§ 449.820).

F. Penalties

Violation of any rule, regulation or final order of the authority is a misdemeanor, and each day of violation a separate offense. Refusal to produce books, papers or information is also a misdemeanor (§ 449).

No violation due to Act of God, war, strife, riot or other condition not proximately caused by negligence or willful misconduct shall be subject to any liability.

IV. EXEMPTIONS AND VARIANCES

A. Exemptions

Agricultural operations, land clearing and grading, private outdoor fireplaces and barbecues, fires set or permitted by public officers for civil defense or fire fighting instruction, weed abatement or elimination of fire hazards are exempted from the Act, (§ 5).

B. Variances

- (1) The Authority may grant specific variances from any requirement to specific persons or class of persons or specific air contamination sources, upon conditions necessary to protect the public health and welfare, if it finds strict compliance is inappropriate because of conditions beyond the control of the persons involved, or because of special circumstances which would render strict compliance unreasonable, burdensome or impractical, or would result in substantial curtailment or closing down of a plant or operation or because no alternative facility or method is available. Such variances may be limited in time. (§ 15).
- (2) The Authority may delegate power to grant variances to legislative bodies of governmental units in any area.
- (3) In considering variances, the granting authority shall weigh all equities involved and the advantages or disadvantages to the residents and the activity.
- (4) A variance may be revoked or modified by the grantor after a public hearing with not less than 10 days' notice to all persons likely to be affected by the revocation or modification.

V. LOCAL ACTION

A. General Authority

Any county or city, notwithstanding charter limitations, may enact ordinances or resolutions with respect to air pollution which do not conflict with O.R.S. §§ 449.760 to 449.830 or rules and regulations promulgated thereunder (§ 449.830(1)).

B. Cooperation

- (1) Any county or city, notwithstanding charter limitations, through their governing bodies may enter into contracts and agreements with other counties and cities to establish and maintain an air pollution program. (§ 449.830(1)).
- (2) Counties and cities so contracting, notwithstanding charter limitations, may also provide for a board or other such body for the supervision, management and operation of an air pollution program and may prescribe its powers and duties and fix the compensation of the members thereof. (§ 449.830(2)).
- (3) a. After January 1, 1968, no county or city shall exercise any of the powers conferred by ORS 449.830, but nothing in this Act is intended to repeal ordinances, resolutions, rules or regulations of said city or county existing on January 1, 1968, except as they may be superseded by rules of a regional authority having jurisdiction over the city or county.

b. Nothing in this Act shall bar the prosecution of or punishment for violation of any ordinance or resolution, which violation was committed when such ordinance or resolution was in effect.

2. Regional Air Quality Control Authority 1/

I. PURPOSE

To provide for a coordinated State-wide air quality control program, to facilitate cooperation among local government units, and to allocate responsibility for air quality control between the State and local government units. (ORS 449.765 as amended by § 3).

II. ADMINISTRATION

A regional air quality control authority may be formed of contiguous territory having a population of at least 130,000 and consisting of two or more counties or parts of counties, two or more cities, or any combination thereof, or any county and a city or cities within the county if the Sanitary Authority finds that:

- a. Adequate financing is planned by the participating governments; and
- b. The boundaries of the proposed region include territory reasonably included within a regional authority for purposes of air quality control. (§ 4(1)).

Ordinances and resolutions adopted by cities and counties in forming a regional authority shall specify the name of the regional authority and shall set forth the participating cities and counties, the principal places of business, and the boundaries of the regional authority.

A certified copy of the ordinance or resolution of each city or county calling for the formation of a regional authority shall be filed with the Secretary of State and with the Secretary of the Sanitary Authority. (§ 5).

1/ Citations refer to Chapter 425, Laws 1967.

Oregon -- Continued

The Board of Directors of a Regional Air Quality Control Authority shall consist of:

- a. One member of the governing body of each participating county, to be designated by the governing body of the county.
- b. One member of the governing body of each participating city and of each nonparticipating city of 25,000 or more population located within a participating county to be designated by the governing body of the city.
- c. One additional member, if the board would otherwise consist of an even number of members, to be selected by members designated under paragraphs (a) and (b), such member also to be a member of the governing body of a participating city or county.

Members designated under paragraphs (a) and (b) shall hold office at the pleasure of the governing body by which he was designated. The member selected under paragraph (c) shall serve for a term of two years. (§ 6).

The Board of Directors of the Regional Authority shall appoint an advisory committee of at least seven members to serve for one year terms at no compensation. (§ 9).

III. POWERS AND DUTIES

- A. When authorized by the Sanitary Authority, a Regional Air Quality Control Authority shall exercise exclusive regulatory jurisdiction except as regards establishing and altering areas and the Regional Authority shall carry out its functions in the same manner as that provided for the Sanitary Authority. The Regional Authority must submit to the Sanitary Authority for its approval, all quality and purity of air standards adopted by the Regional Authority. The Regional Authority shall enforce rules, regulations and orders of the Sanitary Authority in-so-far as it is required to do so by the Sanitary Authority (§ 4(2)(3)).

Oregon -- Continued

- B. The Regional Air Quality Control Authority is a perpetual corporate body and may:

- (1) Sue and be sued except that it shall not be sued in a tort action unless otherwise provided by law;
- (2) Adopt a seal; and
- (3) Acquire and hold or dispose of property necessary or incident to the exercise of its functions (§ 7).

- C. The Regional Authority may apply for funds from the State, the Federal Government, and from public and private agencies.

The Regional Authority may enter into agreements with the State or the Federal Government. (§ 8(1)).

- D. The Regional Authority may adopt necessary rules and may require registration of each person responsible for air contaminant emissions. (§ 8(2)(3)).

Before adopting rules and standards, the Regional Authority shall first hold a public hearing on due notice. (§ 16(1)).

- E. The Sanitary Authority shall delegate to a regional authority the exclusive authority to grant variances within the territory of the regional authority. The Sanitary Authority may condition and review the exercise by the regional authority of its authority to grant and renew variances and the Sanitary Authority may order a regional authority to reduce the period for which a variance was granted to no less than one year. (§ 10(1)(3)).

- F. (1) If, after hearing, the Sanitary Authority determines that the regional authority has failed to establish an adequate program or that the program in force is being administered improperly, it may require that necessary corrective measures be undertaken within a reasonable period of time. (§ 11(2)).

Oregon -- Continued

(2) If the Regional Authority fails to take the necessary corrective measures within the time required, the Sanitary Authority shall undertake a program of administration and enforcement of the air quality control program in the territory of the regional authority. The program instituted by the Sanitary Authority shall supersede all rules, regulations, standards and orders of the regional authority. (§ 11(3)).

(3) If, in the judgment of the Sanitary Authority, a regional authority is able to requalify to exercise its functions the Sanitary Authority shall restore those functions to the regional authority and shall not exercise the same functions in the territory of the regional authority. (§ 11(4)).

G. The Sanitary Authority may assume and retain control over any class of air contamination source if it finds that such control is beyond the reasonable capabilities of the regional authorities because of the complexity or magnitude of the source. (§ 12).

H. After due notice and hearing, orders may be entered against persons found in violation of a rule of the regional authority. (§ 16(a)).

IV. DISSOLUTION

Any regional authority formed under the provisions of the Act may be dissolved by written consent of the governing bodies of all participating counties and cities. Upon dissolution, any assets remaining after payment of all debts shall be divided among the participating counties and cities in direct proportion to the total amount contributed by each. However, all rules, regulations, standards and orders of the regional authority shall continue in effect until superseded by action of the Sanitary Authority (§ 14).

V. INJUNCTION

The regional authority may sue for an injunction to prevent violation of a rule or order. (§ 17(3)).

Oregon -- Continued

VI. APPEALS

Any person aggrieved by a final order of the regional authority may appeal that decision. (§ 17(2)).

VII. STATE FINANCIAL AID

- A. If funds are available, any local air quality control program meeting Sanitary Authority criteria and operated by only one unit of local government shall be eligible for State aid of up to 30 percent of the locally funded annual operating cost, not including Federal funds. (§ 19(1)).
- B. A Regional Air Quality Control Authority operated by more than one unit of local government shall be eligible for State aid for up to 50 percent of the locally funded annual operating cost, not including any Federal funds. (§ 19(2)).
- C. Applications for State funds shall be made to the Sanitary Authority and funds shall be made available under subsections (1) and (2) of this section according to the determination of the Sanitary Authority as to:
 - a. Adequacy and effectiveness of the air quality control program.
 - b. Geographic and demographic factors in the territory under the program.
 - c. Particular problems of the territory under the program. (§ 19(2)).

In order to qualify for any State aid and subject to the availability of funds, the local unit of government operating a program and any regional authority exercising functions or combined units of local government cooperating under ORS 449.830 must submit all applications for Federal financial assistance to the Sanitary Authority before submitting them to the Federal Government (§ 19(3)).

3. Tax Exemptions 1/

I. POLICY STATEMENT

In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of air and water pollution in this State by providing tax relief with respect to Oregon facilities constructed to accomplish such prevention, control and reduction. (§ 1).

II. DEFINITIONS

"Pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device used, erected, constructed or installed by any person for the principal purpose of preventing, controlling or reducing air pollution. (§ 2).

III. APPLICATION FOR CERTIFICATION OF A FACILITY

Any person may apply to the Sanitary Authority of the State of Oregon for certification of a pollution control facility or facilities or part thereof erected, constructed or installed by him on or after January 1, 1967, and on or before December 31, 1978. The application shall be made in writing on a form prescribed by the Sanitary Authority and shall contain information on the actual or estimated cost of the facility or facilities, a description of the materials incorporated or to be incorporated therein, all machinery and equipment made or to be made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of pollution prevention, control or reduction served or to be served by the facility or facilities. (§ 3).

1/ Citations are to Chapter 592, Laws 1967.

Oregon -- Continued

- (1) If the Sanitary Authority finds that a pollution control facility or part thereof, for which an application has been made was erected, constructed or installed on or after January 1, 1967, and on or before December 31, 1978, and is designed for, and is being operated or will operate for, the principal purpose of preventing, controlling or reducing air pollution, and that the facility is necessary to satisfy the intents and purposes of ORS chapter 449 and regulations thereunder, it shall certify such facility.
- (2) A person receiving a certificate under this section shall make an irrevocable election to take a tax credit relief or an ad valorem tax relief.
- (3) The Sanitary Authority shall act on an application for certification before the 120th day after the filing of the application. The action of the Sanitary Authority shall include certification of the actual cost of the facility. If the Sanitary Authority rejects an application for certification, it shall cause written notice of its rejection, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant. Failure of the Sanitary Authority to act constitutes rejection of the application. If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, the applicant may appeal from the rejection. The rejection is final and conclusive on all parties unless the applicant takes an appeal therefrom. (§ 4).

IV. REVOCATION OF CERTIFICATION

At any time the Sanitary Authority may revoke the certification issued of any pollution control facility, if it finds that:

- a. The certification was obtained by fraud or misrepresentation; or
- b. The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air pollution as specified in such certificate.

Oregon -- Continued

The Sanitary Authority shall give written notice of the revocation to the holder of the certificate. The holder of the certificate may appeal from a revocation. The revocation is final and conclusive unless an appeal is taken therefrom. If upon appeal the revocation is affirmed, the date such revocation becomes final shall be the date of the notice to the certificate holder.

As soon as a revocation under this section has become final, the Sanitary Authority shall notify the State Tax Commission and the county assessor of the county in which the facility is located of such revocation.

If the certification of a pollution control facility is revoked pursuant to (a) above, all prior tax relief provided to the holder of such certificate by virtue of such certificate under any provision of this Act shall be forfeited and the State Tax Commission or the proper county officers shall proceed to collect those taxes not paid by said holder as a result of the tax relief provided to said holder under any provision of this Act.

If the certification of a pollution control facility is revoked pursuant to (b) above the holder of such certificate shall forfeit any further relief provided by this Act in connection with such facility, as the case may be, from and after the date that said revocation becomes final.

- c. As a condition to issuance of a certification the Sanitary Authority may require any person, who has applied for such certification and who discharges from any industrial source any air contaminant into the air of the State to submit a periodic report if in the opinion of the Sanitary Authority such discharge results in pollution of the air. The Sanitary Authority may adopt regulations designating those industrial sources on which reports are to be submitted, and may require such reports to be made every 30 days. (8 5).
- (1) Upon receipt of notice of the revocation of a certification of a pollution control facility due to fraud or misrepresentation, the county assessor shall proceed to correct the assessment and tax roll or rolls from which the facility was omitted from taxation.

Oregon--Continued

- (2) Upon receipt of notice of the revocation of a certification of a pollution control facility due to improper operation, if the final revocation occurs before October 15 of any calendar year, the exemption otherwise allowable shall terminate and not be allowed beginning with the assessment and tax rolls prepared as of January 1 of such calendar year. (§ 15).
- (3) Upon receipt of notice of the revocation of a certification of a pollution control facility due to fraud or misrepresentation the State Tax Commission immediately shall collect any taxes due by reason of such revocation, and shall have the benefit of all laws of this State pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes. (§ 16).

V. EXEMPTIONS

A. Income Tax

A credit against income taxes imposed by chapter 316 ORS for taxpayers owning a pollution control facility or facilities certified under this 1967 Act shall be allowed if the taxpayer has not claimed an exemption for ad valorem taxes. The maximum credit allowed in any one tax year shall be five percent of the cost of the facility or facilities, but shall not exceed the tax liability of the taxpayer.

The taxpayer who is allowed the credit must be the owner of the trade or business that utilizes property requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; the facility must be owned or leased during the tax year by the taxpayer claiming the credit and must have been in use and operation during said tax year.

A credit under this section may be claimed by a taxpayer only in those tax years which begin on or after January 1, 1967, and on or before December 31, 1978, regardless of when the facility or facilities are erected, constructed or installed. The maximum total credit allowable shall not exceed 50 percent of the cost of such facility or facilities.

Oregon -- Continued

The credit provided by this section is in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled for such year.

Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year, but credits may not be carried forward for more than three years.

Notwithstanding any other provisions of this chapter, the taxpayer's adjusted basis for determining gain or loss shall be further decreased by any tax credits allowed under this section. (§ 7).

B. Corporation Excise Tax

A credit against corporation excise taxes imposed for taxpayers owning a pollution control facility or facilities certified under this 1967 Act shall be allowed if the taxpayer has not claimed an exemption for ad valorem taxes. The maximum credit allowed in any one taxable year shall be five percent of the cost of the facility or facilities, but shall not exceed the tax liability of the taxpayer.

The taxpayer who is allowed the credit must be the owner of the trade or business that utilizes property requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; and

The facility must be owned or leased during the tax year by the taxpayer claiming the credit and must have been in use and operation during said tax year.

A credit under this section may be claimed by a taxpayer only in those tax years which begin on or after January 1, 1967, and on or before December 31, 1978. The maximum total credit allowable shall not exceed 50 percent of the cost of such facility or facilities.

The credit provided by this section is in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled under this chapter for such year.

Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year, but credits may not be carried forward for more than three years.

Notwithstanding any other provisions of this chapter, the taxpayer's adjusted basis for determining gain or loss shall be further decreased by any tax credits allowed under this section, (§ 9).

C. Ad Valorem Tax

A pollution control facility or facilities which have been constructed on or after January 1, 1967, and on or before December 31, 1978, are exempt from ad valorem taxation if it has been certified by the Sanitary Authority pursuant to this 1967 Act and if the taxpayer has not elected to take a tax credit for income or corporation excise taxes.

To qualify for the ad valorem tax relief:

- a. The pollution control facility must be erected, constructed or installed in connection with the trade or business conducted by the taxpayer on property owned or leased by said taxpayer.
- b. The taxpayer must be the owner of the trade or business that utilizes property requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee, conducts the trade or business that operates or utilizes such property and who by the terms of such lease or agreement is obliged to pay the ad valorem taxes on such property.

The ad valorem exemption of a facility shall expire, in any event, 20 years from the date of its first certification for any owner or lessee by the Sanitary Authority.

The exemption from ad valorem taxation provided under this section shall not be available to a taxpayer for a pollution control facility erected, constructed or installed or first put into operation after December 31, 1970, unless it was erected, constructed or installed for the prevention of pollution from a trade or business activity conducted by the taxpayer on January 1, 1967, on property owned or leased by said taxpayer on January 1, 1967. (§ 13).

Before any exemption from ad valorem taxation is allowed the person claiming the exemption shall file with the county assessor, not later than April 1 in the first year in which he claims such exemption, a written claim for such exemption prepared on a form prescribed by the State Tax Commission and furnished by the assessor, and shall file with the assessor with his first claim for exemption the certificate issued by the Sanitary Authority covering the property for which exemption is sought. Each year thereafter to continue such exemption, the taxpayer must file not later than April 1 a statement with the county assessor, stating that the ownership of all property included in the certificate and its use remain unchanged. (§ 14).

VI. MISCELLANEOUS

No tax relief shall be allowed under this Act for any pollution control facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or form thereof. (§ 17).

If a taxpayer obtains grants or tax credits from the Federal Government, other than investment credits granted under section 46 of the Internal Revenue Code of 1954, in connection with a pollution control facility which has been certified by the Sanitary Authority, the income or excise tax credits which such taxpayer would be entitled to after any such grant or credit has been made available to or received by such taxpayer, shall be offset or reduced by such Federal grants or tax credits, dollar for dollar. Taxpayers applying for such grants shall notify the State Tax Commission of each such application, and of the receipt of any such grant or tax credits. (§ 18).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Pennsylvania 1/

1. Air Pollution Control Act

I. GENERAL STATEMENT

In 1960, the legislature enacted the Air Pollution Control Act creating an Air Pollution Commission, establishing Regional Air Pollution Control Associations, and providing for a system of air pollution control regulation on the State and local levels. It declared as its policy the maintenance of such a reasonable degree of air purity as is technically feasible, economically reasonable, and necessary for the protection of normal health, general welfare, and property (35 § § 4001,4002).

II. ADMINISTRATIVE ORGANIZATION

A. Air Pollution Commission

(1) Organization and Composition

The Commission created within the Department of Health consists of the Secretaries of Health, Commerce, Labor and Industry, Mines and Mineral Industries, and Agriculture, a member of the general public, an industrial toxicologist with air contaminant experience, three State industry (manufacturing or public utility) representatives competent in matters of air pollution control, one of whom must be licensed engineer trained therein, and an additional licensed engineer so trained. Public members are appointed by the Governor with the advice and consent of two-thirds of all the members of the Senate, serve four years, and receive a per diem of \$25 plus actual expenses. A chairman and vice-chairman are elected by the Commission biennially. (35 §§ 4005 (a) thru (e)).

(2) Powers and Duties

- a. Determine and certify regions and subregions.
- b. Adopt, in accordance with the Administrative Agency Law, rules and regulations for the control of air pollution in regions, after

1/ Citations refer to Purdon's Pennsylvania Statutes Annotated and 1966 Cumulative Annual Pocket Part.

reviewing Department studies thereon and comments of interested associations. Adopt regulations for the conduct of business.

- c. Hold at least six meetings per year at the call of the chairman.
- d. Hear and determine in accordance with the Administrative Agency Law all complaints of alleged violations of its regulations referred to it by the Department and Associations.
- e. Prescribe a complaint form which shall be made available to complainants through Associations.
- f. Require measures for the minimization of air pollution, order compliance with its regulations, and stipulate a time for compliance with its orders.
- g. Establish maximum permissible air contaminant quantities for various conditions in various areas. (35 § 4005 (f)).

B. Department of Health

(1) Powers and Duties

In accordance with the policies of the Commission, the Department shall:

- a. Inspect and investigate air pollution sources and ascertain compliance with Commission regulations, keeping confidential trade secrets, and promptly furnishing the suspected polluter with a duplicate analytical report of any samples taken in the course thereof; have access to and require production of pertinent books and papers; and receive and initiate complaints, forwarding them to the interested Association, or if more than one is interested, to the Commission.
- b. Institute complaints, conduct testing and sampling programs, make observations of pollution causing conditions, make tests at contamination sources, and assess the degree of abatement required.

- c. Upon request of the Commission secure court proceedings to enforce orders and act as Commission agent in public hearings; and enforce compliance with Commission regulations.
 - d. Recommend personnel job qualifications for new county and municipal air pollution control agencies.
 - e. Consider, for approval plans and specifications for air pollution control methods submitted, require such submission at the request of the Commission and inspect installations or modifications for conformity with plans.
 - f. Conduct research on the nature and control of air contaminants; determine the degree of locally existent air pollution; develop and submit to the Commission a comprehensive State-wide air pollution control plan; encourage plans with control agencies and associations of municipalities whereby sources of contamination may be located and abated; and encourage voluntary air pollution control and reduction.
 - g. Conduct educational programs with respect to control, prevention, abatement, and reduction; conduct, with local communities, control demonstration programs; and provide technical consultative services to local communities and Associations.
 - h. Cooperate with Federal, interstate, or other State agencies and where appropriate, formulate compacts or agreements for submission to the Legislature; receive and expend Federal or other monies for research.
 - i. Do whatever else is necessary and proper for effective enforcement of the Act and regulations promulgated thereunder. (35 § 4004)
- (2) The Act does not limit Departmental powers under other laws, except where the exercise of such powers is in clear and direct conflict with a rule, regulation or order of the Commission. Subject to such exception the Department may,

upon the approval of the Attorney General, petition a court of competent jurisdiction to order the abatement of any nuisance or condition detrimental to health. The court is not deprived of such jurisdiction even though such nuisance or condition is also subject to regulation or other action by the Commission. (35 § 4011).

C. Regional Air Pollution Control Associations

(1) Organization and Composition

In each region designated by the Commission there shall be an Association comprised of a representative of industry and of labor, a county commissioner of one of the encompassed counties, and a resident of each such county, all appointed by the Governor. Associations are autonomous insofar as their business is concerned. (35 § 4006 (a)(c)).

(2) Powers and Duties

- a. Review and comment upon proposed Commission local regulations within 90 days of receipt thereof.
- b. Suggest suitable local regulations to the Commission.
- c. Consider local complaints, attempting to resolve them voluntarily, and reporting thereon within six months. When voluntary resolution cannot be brought about, complaints shall be referred to the Commission for action. If a second complaint follows within 60 days of a report of a satisfactory disposition the complaint shall be forwarded forthwith.
- d. Cooperate with local persons to develop a regional control program.
- e. As necessary, avail itself of technical services and clerical assistance from the Department, enter into an agreement therewith for reimbursement of its expenses, and provide headquarters which, absent a cogent reason, shall be in the Department's regional office.

- f. Hold at least four meetings per year at the call of the Commission's Chairman.
- g. Submit to the Commission a copy of complaints received and action taken thereon. (35 § 4006 (b)).

D. Political Subdivisions

Local air pollution control ordinances not conflicting with the Act are specifically permitted. The procedures for abatement, reduction, prevention and control of air pollution set forth in this act do not apply to any political subdivision having an air pollution control agency approved by the Commission, except as to sources of air pollution existing within a political subdivision the effects of which extend its boundaries. (35 § 4012).

III. PROCEDURES

A. Public Hearings

Public hearings by the Commission or the Department acting in its behalf shall be held in a region before any rules or regulations are adopted for that region or subregion. Where it is necessary to adopt rules and regulations for more than one region, the Commission may hold one hearing in either of any two contiguous regions to be affected. Where it is necessary to adopt rules and regulations for any area which encompasses more than one region or parts of more than one region public hearing shall be held in the area concerned. Full copies of hearing transcripts shall be available to any party concerned at prevailing rates. (35 § 4007).

B. Appeals

Persons aggrieved by any order, decision, or determination of the Commission have a right to appeal as provided by the Administrative Agency Law. (35 § 4007).

IV. VIOLATIONS AND PENALTIES

A. Unlawful Conduct

Refusal or failure to comply with Commission regulations, participating in a violation of the act or regulations, or interfering in any manner with Department functions under the act is unlawful. (35 § 4008).

B. Penalties

Any person engaged in unlawful conduct, after conviction at summary proceedings, may be fined. Conviction on a third or subsequent offense is a misdemeanor. Violations on separate days are separate offenses. (35 § 4009).

C. Injunction

In addition, the Commission may request the Attorney General to petition for injunctive relief. (35 § 4010).

V. MISCELLANEOUS

A. The provisions of the Act are severable. (35 § 4014).

B. The Act became effective January 8, 1960. It was provided that regulations promulgated thereunder would not become effective until January 8, 1961. (35 § 4005 (g)).

2. Townships, Cities, Boroughs, Counties

- I. The Board or township commissioners of a township of the first class has power to regulate the emission of smoke from chimneys, smoke-, stacks and other sources except locomotive smokestacks (53 §§ 56502 and 56529).
- II. Cities of the second and third class may by ordinance regulate the production or emission of smoke (53 §§ 23164 and 37403).
 - A. Cities of the second class may regulate by ordinance the production or emission of smoke from any source (53 § 23164).
 - B. Cities of the third class may by ordinance (53 § 37403):
 - (1) Regulate the construction and inspection of fire-places, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, factory, or business;
 - (2) Order the suppression or cleaning of the devices listed in (A). above;
 - (3) Regulate the production and emission of smoke or fly ash from any source except from railroad locomotives.
- III. The corporate officers of a borough have power to regulate the emission of smoke from chimneys, smokestacks, and other sources, except from locomotive smokestacks (53 §§ 46202 and 46251).
- IV. The commissioners of a county of the second class are authorized to regulate by resolution or ordinance all forms of air contaminants inimical to the health, safety, or welfare of the public, business, or property within the county. The regulations may provide for collection of fees and for fines and penalties. That the board may provide by regulation for permits is implied by the authorization of the collection of fees therefor (16 § 5195).

The board may borrow, appropriate and expend money, may appoint enforcement officers and authorize the employment of other personnel and may acquire property, all for the purpose of regulating the emission of smoke (15 § 5196).

Violation of a resolution or ordinance constitutes a misdemeanor punishable by a fine not to exceed \$100 and as prescribed by the resolution or ordinance. In default of payment the violator is to be imprisoned for a period not to exceed 30 days (16 § 5197).

The board may determine the effective date of any resolution or ordinance and in so doing shall take into consideration the availability of fuel burning devices suitable for burning high volatile bituminous coal smokelessly (16 § 5195).

Puerto Rico 1/

Anything which is injurious to the health, or indecent, or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered (T. 32, § 2761).

Anything which is injurious to health, or is indecent or offensive to the senses or is an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons is a public nuisance. The emission of smoke from useful manufacturing enterprises except in municipalities of Class I is not a public nuisance unless it is shown by proof in court that the health of a considerable number of persons is injuriously affected thereby. But nothing in the Act prohibits the council of any municipality from passing ordinances to require manufacturing enterprises to use devices to prevent the unnecessary emission of smoke, cinders and soot to the injury and prejudice of the inhabitants in cities and towns (T. 33, § 1365).

A person who maintains or commits a nuisance or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor (T. 33, § 1365).

A person who violates the terms of a proclamation in relation to the public health issued by the Governor or who violates any regulations issued by the Secretary of Health is guilty of a misdemeanor (T. 33, § 1365).

1/ Citations refer to Laws of Puerto Rico Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Rhode Island 1/

1. Rhode Island Clean Air Act

I. GENERAL STATEMENT

The Clean Air Act, replacing the Smoke Abatement Act, designates the Health Department as the air pollution control agency. A five member advisory air pollution board is created to advise the health department director. Provision is made for pollution complaint investigation and hearing.

II. DEFINITIONS

- (1) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, which either alone or in connection with other emission, by reason of their concentration and duration may be injurious to human, plant or animal life, or cause damage to property or inconvenience to property owners, or create a disagreeable or unnatural odor, or obscure visibility, or which in any way interferes with the enjoyment of life and property. (§ 23-25-3).
- (2) "Air contaminant" is soot, cinders, ashes, any dust, fumes, gas, mist, smoke, vapor, odor, toxic or radioactive material, particulate matter, or any combination thereof. (§ 23-25-3).
- (3) "Person" means an individual, firm or co-partnership, association, syndicate, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any other entity recognized by the law as the subject of rights and duties. (§ 23-25-3).
- (4) "Open fire" means any fire which the products of combustion are emitted directly into the open air without passing through a stack or chimney. (§ 23-25-3).

1/ Repeals and substitutes ch. 23-25, chapter 256, S. B. 317.

Rhode Island -- Continued

III. RHODE ISLAND AIR POLLUTION CONTROL AGENCY

The Health Department is designated as the State Air Pollution Control Agency and the Director of Health is responsible to administer the law. (§ 23-25-4).

An Advisory Air Pollution Board of five members is created. The members shall be appointed by the Governor for three-year terms, except that the initial appointees shall serve staggered terms. A vacancy shall be filled by gubernatorial appointment. No compensation shall be paid to members, but they shall receive necessary travel and other expenses incurred in duty performance. (§ 23-25-4).

The members shall choose a Chairman and Vice-chairman from among themselves and the Director shall appoint a Secretary. (§ 23-25-4).

The Board will make suggestions to and advise the Director concerning policies, plans and goals in relation to the administration of the law. At least annually, it shall make recommendations and submit them to the Director. To properly perform this duty, the Board is authorized to use the Health Department services. (§ 23-25-4).

IV. DIRECTOR OF HEALTH

A. Power and Duties

The Director shall have the following powers and duties:

- (1) To exercise general supervision of the administration and enforcement of the law and all rules and regulations and orders promulgated thereunder. (§ 23-25-5 (a)).
- (2) To develop comprehensive programs, for the prevention, control and abatement of new or existing pollution of the air resources of this State, and to adopt, modify or repeal and promulgate standards of air quality for the State or any region or district thereof. (§ 23-25-5 (b), (d)).
- (3) To advise, consult and cooperate with the cities and towns and other agencies of the State, Federal government, and other States and interstate agencies and with effective groups in industries, and to accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the functions of air pollution control including such monies given under any Federal law to the State for air pollution control activities, surveys or program. (§ 23-25-5(c),(1)).

Rhode Island -- Continued

- (4) To encourage and conduct studies and research on air pollution and to collect and disseminate information thereon. (§ 23-25-5 (f)).
- (5) To make, issue and amend rules and regulations consistent with the law for the prevention, control and abatement and limitation of air pollution, and the enforcement of orders issued hereunder. Such rules and regulations for the control of pollution need not be uniform throughout the State. Variations thereof may be based on considerations of population density, meteorological conditions, contaminant emissions, air quality, land development plans, and such other factors which may be relevant to the protection of the air resources of the State, and to issue, modify, amend or revoke orders prohibiting or abating air pollution. In making the orders, the Director shall consider all relevant factors including, but not limited to, population density, air pollution levels, the character and degree of injury to health or physical property and the economic and social necessity of the source of air pollution. (§ 23-25-5(h),(1)).
- (6) To enter at all reasonable times in or upon any private or public property, except private residences, and to detain and inspect any motor vehicle for the purpose of inspecting any condition which the Director shall believe to be either an air pollution source, or in violation of any of the rules or regulations or orders promulgated hereunder. (§ 23-25-5(g)).
- (7) To hold such hearings, to issue notice of hearings, and subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary. (§ 23-25-5(e)).

- (8) To require the prior submission and approval of plans, specifications, and other data relative to the construction, installation and modification of air pollution control systems, devices or any parts thereof, and to inspect such installations and modifications to insure compliance with the approved plans, and to require the prior submission and approval of plans, specifications and other data relative to the construction, installation or modification of any machine, equipment, device, article or facility capable of becoming a source of air pollution, subject, however, to the promulgation of rules and regulations, hereunder defining the classes and types of machines, equipment, devices, articles or facilities subject to such approval. (§ 23-25-5(j)(k)).
- (9) To consult the Board on the policies and plans for the control and prevention of air pollution. (§ 23-25-5(m)).
- (10) To make or have made tests to determine the emission of air contaminants from premises, buildings or other places belonging to or controlled by any person, or to provide such information as he may request regarding such emission. The person owning or controlling the premises, building or other place to be tested shall provide the necessary holes and stack or duct work or such other sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for the proper determination of the emission of air contaminants. The Director may observe such tests and specify the testing method to be used by qualified personnel in accordance with good professional practice and should such test show that a violation of a rule or regulation made hereunder or any order of the Director was not occurring the Director shall pay one half of the cost of said tests. (§ 23-25-12).

V. PROCEDURE

A. Rules

In order that there shall be no lapse in the control of air pollution, existing laws, ordinances, rules and regulations of cities and towns shall become, on the effective date of this chapter, State rules and regulations, and shall be enforced by the Director as if they were rules and regulations adopted by the Director in accord with the provisions of this chapter. Such laws, ordinances, rules and regulations shall, however, be in effect only within the jurisdiction of the city or town in which they were originally enacted and for the period of not more than one year after the effective date of this act or until the Director shall adopt rules and regulations hereunder for the abatement and control of air pollution, whichever period is shorter. (§ 23-25-19).

B. Complaint Investigation and Hearing

- (1) If the Director has cause to believe that any person is violating this chapter or any rules or regulations promulgated under it, he shall launch an investigation and hearing. At the hearing the Director shall receive evidence and hear witness in behalf of the accused violator. (§ 23-25-6).
- (2) Witnesses shall be served subpoenas as in civil cases in the superior court and shall be entitled to the same fees for travel and attendance as in that court. The superior court may, in cases of failure to obey the subpoena command, upon the Director's application, issue a rule or order returnable in not less than two nor more than five days, directing such person to show cause why he should not be adjudged in contempt. (§ 23-25-7).
- (3) If a person is found to be causing air pollution, the Director may enter an order requiring such person to adopt, use, or operate properly some practicable and reasonable available control system or device or means to prevent such pollution, taking due consideration of the rights and interests of involved parties. When one system or means is more practical than others, the order may direct that such system be employed. The order shall specify the time within which the system shall be adopted. However, the time limit may be extended in the Director's discretion upon application by such person. (§ 23-25-8(a)).

- (4) If the Director's order does not specify a system or means, the violator shall submit to the Director a plan or statement describing the system or means he proposes to employ. If he should subsequently desire to change the system or means adopted, such person shall first file with the Director a plan or statement describing the change. The Director may then enter an approval order. A copy of each order shall then be sent to the affected person by certified or registered mail. (§ 23-25-8(b)).
- (5) Any person adopting and properly operating a system or means to prevent air pollution in compliance with the Director's order shall be deemed to have complied with all orders and determinations of the Director. (§ 23-25-9).

C. Enforcement

- (1) All prosecutions for the violations of any order of the Director shall be by complaint and warrant and shall be made in the district courts of the State. The Director, without being required to enter into any recognizance or to give surety for cost, or the attorney general of his own motion, may institute such proceedings in the name of the State. It shall be the duty of the attorney general to conduct the prosecution of all such proceedings brought by the Director. (§ 23-25-10(a)).
- (2) The Director may obtain relief in equity or by prerogative writ. The superior court shall have the jurisdiction in equity to enforce the provisions of this chapter and any rule or regulation or order made by the Director in conformity therewith. Proceedings under this section shall follow the course of equity and shall be instituted and prosecuted in the name of the Director by the attorney general, but only upon the request of the Director. (§ 23-25-10(b)).
- (3) No person shall be convicted or found liable in any criminal prosecution or at any other proceeding brought by or in behalf of the State, the Director or the public to enjoin, suppress, prohibit, or punish air pollution unless he shall have violated a rule or regulation or order of the Director, issued under the authority conferred upon him by this chapter; provided, however, that nothing in this section shall be held to affect any civil right action or remedy of any person at law or in equity. (§ 23-25-11).

- (4) Upon request of the Director, any person having any air pollution control system shall keep such accurate records of operation as may be specified by the Director and shall submit such records of operation and a plan and statement or true copies thereof, describing all such systems owned or controlled by him. Such statements, records, plans and descriptions shall be signed by said person or his agent. (§ 23-25-13).

D. Variances

- (1) Upon application and after the hearing, the Director may suspend any rule in relation to any person who shows that such a regulation would constitute undue hardship upon him without bestowing a corresponding benefit or advantage. (§ 23-25-15(a)).
- (2) The Director shall give due recognition to the progress such person has made in eliminating or preventing air pollution. He shall consider the reasonableness of granting a variance condition on the person's affecting a partial abatement of the pollution or a progressive abatement thereof or such other circumstances as the Director may deem reasonable. No variance shall be granted to any person applying therefor who is causing air pollution which creates a danger to public health or safety. (§ 23-25-15(b)).
- (3) A variance shall be granted for such period of time, not exceeding one year, as the Director shall specify. It may be continued from year to year. No variance shall be construed as to relieve the person receiving it from any liability imposed by law for the commission or maintenance of a nuisance nor shall there be any appeal from a denial of a variance. (§ 23-25-15(c)).

E. Confidential Information

- (1) Plans and records of air pollution systems submitted to the Director shall not be open to inspection and their contents shall not be disclosed except in the enforcement of the law. Such statements, records, plans and descriptions may be open to public inspection when such person is a municipal corporation. (§ 23-25-13).

- (2) Any information relating to secret processes or methods of manufacture or production obtained during an investigation shall be kept secret. If samples of air or air contaminants are taken for analysis, a duplicate of the analytical report shall promptly be furnished to the person suspected of causing air pollution. (§ 23-25-5(g)).

F. Emergency Procedure

If the Director finds or has cause to believe that any person is committing a violation which is an immediate danger to public health or safety, he may order such person to cease such violation or alleged violation. Within twenty-four hours after issuing the order, or such longer time as the alleged violator may designate, the Director shall grant such person a hearing. Not more than twenty-four hours after the conclusion of such hearing the Director shall affirm, modify or set aside such order. (§ 23-25-16).

VI. VIOLATIONS AND PENALTIES

Any person who shall violate an order of the Director shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days or by both such fine and imprisonment, and every person shall be deemed guilty of a separate and distinct offense for each day during such violation shall be repeated or continued. (§ 23-25-14).

VII. SCOPE AND CONSTRUCTION

Transfer of municipal personnel to the State service. All full time personnel who are presently employed in the various municipal smoke inspection offices, and who have been so employed for a period of at least six months at the time of the passage of this chapter, in positions which in the judgment of the Director are comparable to those created hereunder in administering this chapter shall be granted permanent status in the State service after passing a non-competitive examination. Said employee shall receive at least the same rate of pay that he was formerly receiving from the municipality including allowance for anticipated increments and credit for accumulated sick leave and annual leave and shall suffer no loss in any other status or rights formerly provided by the municipality from which the employee was transferred. (§ 23-25-20).

VIII. EFFECTIVE DATE

January 1, 1967, Approved May 26, 1966.

2. Open Fire Burning Regulation

The health department director may prohibit the burning of any material in an open fire by any person on public or semi-public refuse disposal facilities or at other central refuse disposal sites. He may also prohibit the burning of any material in an open fire by any person in connection with any salvage operation. (§ 23-25-18).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

South Carolina

1. Air Pollution Control Act 1/

I. GENERAL STATEMENT

House Bill No. 1227 (1965) changed the name of the Water Pollution Control Authority to the "Pollution Control Authority". The Authority has jurisdiction to abate, control, and prevent the pollution of the waters and air of the State consistent with the protection of the health and physical property of the people, maximum employment and the full industrial development of the State. The Authority is empowered to adopt rules and regulations, hold hearings, enter orders, represent the State in formation of interstate compacts, and bring suit to compel compliance with its orders. Violation of Authority orders is punishable by fine, and injunctions may be imposed.

II. DEFINITIONS

- A. "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural. (§ 70-101).
- B. "Source" is any and all points or origin of air contaminants whether privately or publicly owned or operated. (§ 70-101).
- C. "Undesirable levels" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property. (§ 70-101).

1/ Citations preceded by "70-" refer to the Code of Laws of South Carolina 1962.

South Carolina -- Continued

III. POLLUTION CONTROL AUTHORITY OF SOUTH CAROLINA

A. Composition and Organization

The Commission has ten members. (§ 70-103). Two members are named by the Executive Committee of the State Board of Health from within its membership to serve at the pleasure of the Executive Committee. The State Health Officer serves permanently as Chairman. Seven members are appointed by the Governor: one from a list of three submitted by the Cotton Manufacturer's Association of South Carolina; one from a list of three submitted by the South Carolina Wildlife Federation; one from a list of three submitted by the Municipal Association of South Carolina; one from a list of three submitted by the pulp and paper industry; one former actively engaged in farming; two from a list of three names from the ranks of labor submitted by the Commissioner of Labor. The seven gubernatorial appointees serve four year terms. (§ 70-104).

The appointive members receive per diem, travel, and subsistence while performing their duties. (§ 70-105).

B. Powers and Duties

The Authority shall have the power or duty:

- (1) To hold public hearings, compel attendance of witnesses, make findings of fact and determinations and assess penalties as are prescribed. (§ 70-110(2)).
- (2) Institute legal proceedings to compel compliance with this law or its determinations and orders. (§ 70-110(4) and § 70-123.1(A)(5)).
- (3) Issue, continue in effect, or deny permits for the prevention and abatement of pollution. (§ 70-110(5)).
- (4) Conduct investigations. (§ 70-110(6), § 70-123(A)1).
- (5) Settle or compromise penalty suits. (§ 70-110(7)).

- (6) Cooperate with the governments of the United States, other States or agencies in respect to pollution control matters or for formulation of interstate compacts or agreements. (§ 70-110(9), § 70-123.1(B)(4)).
- (7) Conduct studies and research. (§ 70-110(10), § 70-123.1(B)).
- (8) Serve as the agency of the State for receipt of money from the Federal Government or other agencies and expend them. (§ 70-110(13), § 70-123.1(B)).
- (9) To adopt, amend, and cancel rules and regulations to implement this law and to govern its procedures. (§ 70-108).
- (10) To seek the control of air contaminants by all practical and economically feasible methods. (§ 70-107, 70-123.1).
- (11) To prepare and develop a general plan for the proper control of the air resources of South Carolina. (§ 70-123.1(A)(1)).
- (12) To enter at all reasonable times in or upon any private or public property, except private residences or dwellings of four families or less, to inspect and investigate any condition which the Authority shall have reasonable cause to believe to be a source of air contaminant. (§ 70-123.1(A)(1)).
- (13) To enter such orders or determinations as may be necessary to effectuate the purposes of this act. (§ 70-123.1(A)(4)).
- (14) To have assistance and cooperation of other State agencies. (§ 70-123.1(A)(6)).
- (15) To encourage voluntary cooperation in restoration and preservation of a reasonable degree of purity of air. (§ 70-123.1(B)(1)).
- (16) To collect and disseminate information on air control. (§ 70-123.1(B)).

South Carolina -- Continued

C. Jurisdictional Limitation

Nothing contained in this act shall be deemed to grant to the Authority any jurisdiction or authority to make any rule, regulation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air condition. (§ 70-123.1(C)).

IV. EXECUTIVE DIRECTOR

The Executive Director is selected by the Authority. He has authority and performs duties as directed by the Authority. (§ 70-106).

V. PROCEDURE

A. Hearings

- (1) A record, or summary thereof, shall be taken and filed with the Authority. If requested by any person concerned with the hearing, a full stenographic transcript, or actual recording shall be made and filed. (§ 70-127).
- (2) An Authority member, the Executive Director, or any employee or agent thereof authorized by the Authority may administer oaths, examine witnesses and issue notices of hearings and subpoenas. (§ 70-128).
- (3) Courts of common pleas may, on application of the Authority, issue an order enforcing a subpoena and punish as contempt any failure to obey such order. (§ 70-129).

B. Appeals

Any person may appeal an Authority order within thirty days after its filing. On appeal, further testimony may be taken. (§ 70-131).

- B. Nothing contained in this Act shall be construed to postpone, stay, or abrogate the enforcement of State public health laws and regulations in respect to discharges causing actual or potential hazards to public health nor to prevent the State Board of Health from exercising its right to prevent or abate nuisances. (§ 70-139).
- C. If any part of this Act is adjudged unconstitutional, such adjudication shall not affect the validity of the rest of the Act. (§ 9).
- D. This Act shall be the means within this State for the control of "air contaminants," "sources," or "undesirable levels" as defined herein. Nothing herein shall be construed to prevent private actions to abate nuisances under existing laws, and the granting of injunctive relief in such actions in the exercise of sound judicial discretion. (§ 70-123.4).
- E. Liability does not extend to violations caused by an Act of God, war, strike, riot, or other catastrophe as to which negligence of the defendant was not the proximate cause. (§ 70-122).

VIII. EFFECTIVE DATE

Approved June 8, 1965.

2. Local Controls

In counties which have cities of 65,000 inhabitants or more it is unlawful for any manufacturer of acids or other distillations of a corrosive nature or of acid odor, offensive or dangerous to human or plant life, to discharge into the air fumes from such manufacture without first treating such fumes to render them innocuous, inoffensive and harmless to human or plant life (§ 32-1851).

A violation of the provision is a misdemeanor and upon conviction punishment is in the discretion of the court. (§ 32-1851).

The limit of liability in civil actions based on such violation is actual damages sustained by the plaintiff (§ 32-1852).

3. Aiken County Air and Water Pollution Commission 1/

I. ADMINISTRATION

The Aiken County Air and Water Pollution Commission is to consist of eleven members appointed by the Governor, upon the recommendation of a majority of the county legislative delegation, to serve for four year terms. (§ 1).

II. POWERS AND DUTIES

- (1) The Commission has surveillance and investigative authority and is to encourage cooperative groups. The Commission is to report the results of its investigations to the legislative delegation from the county. (§ 2).
- (2) The Commission is authorized to contract with the Federal Government, the State or any political subdivision thereof, or with any agency or person. The Commission is authorized to accept grants or gifts. (§ 3).
- (3) The Commission is authorized to investigate and hold hearings in connection with its duties, and is authorized to subpoena any witness for appearance who is subject to its jurisdiction. (§ 4).

1/ Citations refer to Ratification No. 300, Laws 1967.

4. Tax Exemption

Treatment facilities or equipment of manufacturing plants which control water or air pollution are exempt from all property taxation. (§ 1, House Bill No. 2312, Ratification No. 1047, Laws 1966).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

South Dakota 1/

Section 58.0201 provides:

"Each organized township in the State is a body corporate and has power:

"(6)When unincorporated town is within its limits:

"(d) To abate any nuisance found, within its corporate limits,"

Section 45.0201 provides:

"Every municipality shall have power:

"(34) To declare what shall constitute a nuisance and prevent, abate, and remove the same.

"(35) To do what may be necessary or expedient for the promotion of health or the suppression of disease."

Section 27.2102 provides:

"The township board of health may examine into all nuisances... and causes of sickness within the township. Such board may make such rules or regulations respecting the same as it may judge necessary for the public health and safety of the inhabitants."

Chapter 37.47, which codifies the law of nuisance, authorizes three remedies:

1. Civil action;
2. Abatement; and
3. In the case of a public nuisance, indictment or information (§ 37.4707).

1/ Citations refer to South Dakota Code of 1939.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Tennessee

1. Air Pollution Control 1/

I. PURPOSE

To maintain purity of the air resources consistent with the protection of normal health, general welfare and physical property of the people, maximum employment and the full industrial development of the State.

II. DEFINITIONS

- (1) "Air contaminant" is particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof.
- (2) "Air contaminant source" is any and all sources of emission of air contaminants, whether privately or publicly owned or operated.
- (3) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life or property.
- (4) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or their legal representative, agent or assigns. (§ 2).

III. ADMINISTRATIVE ORGANIZATION

Creates an independent agency to be known as the Air Pollution Control Board, to be composed of the Commissioner of Public Health, The Director of the State Planning Commission, and eight others appointed by the Governor, serving without compensation for four year terms. The Board is to hold at least two regular meetings per year. (§ 4).

1/ Citations refer to Chapter 367, Public Laws 1967.

IV. POWERS AND DUTIES OF THE BOARD

- (1) Develop and prepare a general comprehensive plan for the prevention, control, and abatement of air pollution;
- (2) Establish, modify or amend, after public hearing:
 - a. air quality standards;
 - b. emission standards for air contaminants; and
 - c. a system of permits applicable to installation or modification of facilities capable of becoming a source of air pollution;
- (3) Promulgate rules and regulations for the prevention, control and abatement of air pollution;
- (4) Establish, without hearing, rules and regulations with respect to Board procedure;
- (5) Enter at all reasonable times in or upon any private or public property except private residences for the purpose of inspecting and investigating any condition which the Board shall have reasonable cause to believe to be an air contaminant source;
- (6) Require that any person whom the Board has reason to believe is or may be about to be contributing to air pollution to furnish the Board pertinent information required by it, however, such person shall not be required to disclose any secret formulae, processes or methods used in any manufacturing operation carried on by him or under his direction. The composition of air contaminants shall not be considered secret unless so declared by the Board and the Board shall have the power to issue protection orders to prevent public dissemination;
- (7) Cause to be instituted in a court of competent jurisdiction, legal proceedings to compel compliance with any order or determination by the Board;
- (8) Provide such technical, scientific and other services as may be necessary for carrying out the provisions of this Act;

- (9) Represent the State in matters pertaining to plans, procedures or negotiations for interstate compacts relative to air pollution;
- (10) Collect and disseminate information relative to air pollution; encourage voluntary cooperation of affected persons or groups in preserving and restoring a reasonable degree of air purity; advise, consult and cooperate with other agencies, persons or groups in matters pertaining to air pollution; and encourage authorized agencies of political subdivisions to handle air pollution problems within their respective jurisdictions. (§ 5).

V. TECHNICAL SECRETARY

The Director of the Air Pollution Control Division or Service of the Tennessee Department of Public Health shall be Technical Secretary of the Board.

Among other things, the Technical Secretary shall:

- (1) make or cause to be made such investigations as directed or authorized, or as may be warranted due to receipt of information concerning an alleged violation of this Act or any rule, regulation, or order;
- (2) endeavor to the fullest extent possible to obtain compliance with this Act and with rules and regulations promulgated pursuant thereto;
- (3) make recommendations to the Board for issuance of notice of complaint and prosecute such complaints before the Board. (§ 7).

VI. HEARINGS

Notice of public hearings shall be given at least 30 days prior to the scheduled date of such hearing. The Board with approval of the Governor may designate one of its members or appoint a lawyer as hearing examiner to conduct hearings. (§ 8(A)(1, 2)).

At such hearings any interested person shall be given opportunity to be heard.

Any person heard or represented at such hearing or requesting notice shall be given written notice of the action of the Board with respect to the subject thereof. (§ 8(A)).

Upon filing with the Board by the Technical Secretary of formal complaint of an alleged violation, the Board may cause to have issued and served upon the alleged violator a formal notice of complaint and shall require the alleged violator to answer the charges at a hearing.

The respondent to such a formal complaint may file a written answer and may appear at such hearing in person or by representative, with or without counsel, and may make oral argument, offer testimony or cross-examine witnesses.

All testimony shall be under oath and stenographically recorded. The transcript shall be made available to the respondent or any party to a hearing.

The burden of proof in such hearings shall be on the Technical Secretary. (§ 8(B)).

VII VARIANCES

A petition for variance is to be filed with the Technical Secretary, who shall promptly investigate such petition and make recommendation to the Board as to the disposition thereof.

The Board in considering the granting of a variance shall give due consideration to the equities of the petitioner and others who may be affected by granting or denial of the petition. The Board may make the granting of a petition for variance contingent upon such other requirements or restrictions on the petitioner as deemed appropriate and reasonable. Any variance granted shall not exceed one year but may be extended from time to time but in no case for longer than one year at a time. The Board without need of holding a hearing may grant a variance if the Technical Secretary recommends the variance. (§ 8(C)).

VIII. EMERGENCIES

If the Commissioner of Public Health, with the concurrence and advice of the Technical Secretary, finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health and safety he may with the approval of the Governor order the person or persons responsible for the operation or operations in question, or the person or persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the Commissioner. (§ 9).

IX. INJUNCTIONS

The Board may cause to be instituted a civil action for injunctive relief to prevent violation of any duly promulgated rule or regulation or of any order of the Board. (§ 4).

X. LIMITATION

The statute creates no private rights. (§ 14).

XI. JUDICIAL REVIEW

Action of the Board and any order issued by the Board and any emergency action by the Commissioner of Public Health may be reviewed by petition for common law writ of certiorari, addressed to the circuit court of Davidson County, which petition shall be filed within ten days from the date the order of the Board is made.

The decision of the Board or Commissioner shall be reviewed by the circuit court solely upon any pleadings which may have been filed and the transcript of the proceedings, and neither party shall be entitled to introduce any additional evidence in the circuit court. (§ 10).

XII. PENALTIES

Violation of any rule or regulation duly promulgated by the Board is declared to be a misdemeanor, punishable under the general punishment statute relating to misdemeanors. (§ 12).

2. Local Programs

Any political subdivision desiring to be exempted from the provisions of this Act may file a petition with the Technical Secretary, who shall investigate such petition and make recommendations to the Board as to the disposition thereof. A certificate of exemption shall be granted if the Board determines that such political subdivision provides for the control of air pollution by resolution, ordinance or regulation not inconsistent with the substantive provisions of this Act or any rule or regulation promulgated hereunder and that such are being enforced. (§ 8). Local air pollution programs are expressly retained pending their filing for exemptions. (§ 14).

3. Hamilton County 1/

Hamilton County is authorized to pass regulations regulating air pollution (§ 1) and to enter into any agreements with the chief legislative body of any one or more municipalities that lies within the boundaries of the county for the purpose of permitting the county and such municipality to either jointly or by one agency regulate air pollution. (§ 2).

Anyone who is found guilty of violating any reasonable regulation passed by the Hamilton County Council shall be guilty of a misdemeanor and punished accordingly and each day shall be a separate violation. (§ 3).

This Act shall have no effect unless it is approved by a two-thirds vote of the Hamilton County Council before July 1, 1967. (84).

1/ Citations refer to Chapter 273, Private Laws 1967.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Texas 1/

I. PURPOSE

To safeguard the air resources of the State from pollution by controlling or abating air pollution consistent with the protection of health, general welfare and physical property of the people, operation of existing industries and the economic development of the State. (Sec. 1).

II. DEFINITIONS

"Air pollution" means the presence in the atmosphere of undesirable levels of air contaminants. (Sec. 2(D)).

"Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor or odor or any combination thereof produced by processes other than natural. (Sec. 2(A)).

"Undesirable levels" of air contaminants is the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect humans, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property. (Sec. 2(C)).

III. ADMINISTRATIVE ORGANIZATION

Creates and establishes the Texas Air Control Board to be composed of six members appointed by the Governor and the State Commissioner of Health, the Executive Director of the Texas Industrial Commission, and the Executive Director of the Texas Animal Health Commission. Members serve without pay and for terms of six years. Five members constitute a quorum to transact business. (Sec. 3(A), (B), (C), (D)).

An executive secretary shall be the administrator of air control activities for the Board. The executive secretary shall be an employee of the State Health Department and the Commissioner of Health shall designate such employee as the executive secretary following consultation with the Board. (Sec. 3(H)).

1/ Citations refer to Senate Bill No. 237, approved June 18, 1967.

IV. POWERS AND DUTIES OF THE BOARD

- (1) To make necessary rules for Board procedures (Sec. 3(G));
- (2) To prepare and develop a general plan for the proper control of the air resources of the State (Sec. 4(A)(1));
- (3) To adopt and promulgate rules and regulations consistent with the general intent and purposes of this Act (Sec. 4(A)(2)(a));
- (4) To develop such facts and make such investigations as are consistent with the purposes of this Act, and in connection therewith the Board or its duly authorized agents and employees may enter at all reasonable times in or upon any private or public property for the purpose of inspection and investigation of any condition which the Board shall have reasonable cause to believe to be an air contaminant source (Sec. 4(4)(3));
- (5) To hold hearings, receive pertinent and relevant evidence from any party in interest, issue subpoenas to compel attendance of witnesses and production of evidence, and make findings of fact and determinations, all with respect to administering the provisions of this Act or any orders, determinations, rules or regulations of the Board (Sec. 4(4)(a));
- (6) To enter such orders or determinations as may be necessary to effectuate the purposes of this Act (Sec. 4(5)(a));
- (7) To cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with the provisions of this Act or with any rules, regulations, orders or determinations made by the Board (Sec. 4(6));
- (8) To request and be entitled to receive the assistance of any State educational institution, experiment station, board, department or agency and the officials and employees thereof (Sec. 3(I)), (Sec. 4(7));
- (9) The board is authorized to request, solicit, contract for, receive or accept money from any Federal agency, state agency, political subdivision, private source, or other legal entity to carry out the duties required of it (Sec. 3(J));
- (10) Encourage voluntary cooperation by persons, or affected groups in restoration and preservation of a reasonable degree of purity of air (Sec. 4(B)(1));
- (11) Encourage and conduct studies, investigations and research (Sec. 4(B)(2));
- (12) Collect and disseminate information on air control (Sec. 4(B)(3));

- (13) Advise, consult and cooperate with other agencies of the state, political subdivisions, industries, other States and Federal Government, and with interested persons or groups in regard to matters of common interest in air pollution (Sec. 4(B)(4));
- (14) Represent the State in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts (Sec. 4(B)(5)); and
- (15) Make biennial reports to the Governor and Legislature (Sec. 3(K)).
- (16) The Board is without the jurisdiction or authority to make any rule, regulation, recommendation or determination or to enter any order with respect to air conditions existing solely within the boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air condition. Nothing contained in the Act vests in the board any power with respect to any matter subject to the jurisdiction of the Texas Radiation Control Agency as defined in Article 4590F, Revised Civil Statutes of Texas, as amended, or over any source licensed by the Atomic Energy Commission under the Atomic Energy Act of 1954, Title 43 USC 2011-2281, Inc. (Sec. 4(c)).

V. INVESTIGATIONS

The Executive Secretary of the Board may cause investigations to be made as he may deem advisable in administering the provisions of this Act and the rules, regulations, orders and determinations of the Board, including investigations of violations and general air pollution problems or conditions. (Sec. 7(a)).

The Executive Secretary shall prepare and recommend to the Board plans and procedures necessary to effectuate the aims and objects of this Act, including but not limited to rules and regulations, and proposals of administrative procedures. (Sec. 5(A)).

If the Executive Secretary finds that a violation does exist, the Board may institute action for injunctive relief or impose a penalty, or it may hold a public hearing. (Sec. 5).

VI. RULEMAKING

Board rules or regulations may not be adopted until after a public hearing is held upon publically advertised notice. (Sec. 6(A)).

A rule or regulation adopted by the Board may differ in its terms and provisions as between particular conditions, as between particular sources and as between particular areas of the state. (Sec. 6(B)).

- A. The Board may not require that emissions, from plants processing agricultural products in their natural state, be less than eight percent of the process weight of the materials entering the process. (Sec. 6(C)).
- B. If an investigation discloses, in the opinion of the Board or the Executive Secretary, that a violation does exist, the Board may proceed under Section 12 of the Act to sue for injunctive relief or it may hold a public hearing. If the Board decides to hold a public hearing thereon, the Executive Secretary shall prepare and submit to the Board a formal complaint. The complaint shall specify the provision of this Act or the rule, regulation, order or determination of the Board which is said to have been violated, the person alleged to have violated the same, and the manner in which the same is said to have been violated.
- C. The Board shall transmit to the person complained against a copy of the formal complaint together with a notice of hearing. (Sec. 7(B)).

The respondent to such formal complaint may file a written answer thereto and may appear at such hearing in person or by representative, with or without counsel, and may offer testimony and evidence, cross-examine any witnesses, make oral arguments or take any combination of such actions. The Executive Secretary, on behalf of the Board, at the request of any respondent shall subpoena and compel the attendance of such witnesses as the respondent may reasonably designate and shall require the production for examination of any book or paper relating to the matter under investigation at any such hearing as the respondent may reasonably designate. (Sec. 7(C)).

- D. After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing on the complaint, or upon default of the appearance of the respondent on the return day specified in the notice of the hearing, the Board shall make such final determination and enter such order as it shall deem appropriate under the circumstances, and it shall immediately notify the respondent thereof in writing by certified mail. Any such order shall not be deemed finally made and entered until it shall have been approved in writing by at least five members of the Board. (Sec. 7(D)).

VII. CONFIDENTIALITY OF RECORDS

No information identified as confidential when submitted relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise. (Sec. 8).

VIII. VARIANCES

- A. The Board may grant individual variances beyond the limitations prescribed herein, whenever it is found, upon presentation of adequate proof, that compliance with any provisions of the Act, or any rule or regulation, order or determination of the Board, will result in an arbitrary and unreasonably taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people.

In determining under what conditions and to what extent a variance may be granted, the Board shall give due recognition to the progress which the person requesting such variance shall have made in controlling or preventing any condition which may have existed. In such a case, the Board shall grant such variance conditioned upon such person effecting a partial abatement over a period of time which the Board shall consider reasonable under the circumstances; or the Board, in conformity with the intent and purpose of the Act to protect health and property, may prescribe other and different requirements with which the person who receives such variance shall comply.

- B. Any person seeking a variance shall do so by filing a petition for variance with the Executive Secretary. The Executive Secretary shall send a copy of the petition or a summary of its contents to the mayor and health authorities of the city or town, and the county judge and health authorities of the county in which the source or sources are or will be located and to such officials of other counties, cities and towns which, in the judgment of the Executive Secretary or the Board, may be affected. Any person may file comments or recommendations on the requested variance with the Board. The Executive Secretary shall also proceed promptly to investigate such petition and to make a recommendation to the Board as to the disposition thereof. Upon receiving the recommendation of the Executive Secretary, the Board may, if such recommendation is for the granting of a variance,

do so without hearing. If the recommendation of the Executive Secretary is against the granting of a variance, if a local government requests a hearing, or if the Board in its discretion concludes that a hearing would be advisable, then a hearing shall be held before the Board acts on the petition for variance.

- C. Variances shall be granted for such period of time as shall be specified by the Board at the time of the grant of such variance. Any variance may be granted by the Board upon the condition that the person who received it shall make such periodic reports to the Board as the Board shall specify as to the progress which such person shall have made toward compliance with any rule or regulation as to which a variance has been granted. Such variance may be extended by affirmative action of the Board upon recommendation of the Executive Secretary. (Sec. 9).

IX. VIOLATIONS; PENALTIES

- A. It is unlawful for any person to cause, suffer, allow or permit the emission of air contaminants which cause or contribute to or which will cause or contribute to a condition of air pollution. (Sec. 12(A)).
- B. In the event the Board determines that any provision of this Act or any rule, regulation, determination or order of the Board is being violated, the Board may cause to have instituted a civil action in the district court for any county in which the violation occurs for injunctive relief to prevent any further violation or for the assessment of a penalty of not less than \$50 nor more than \$1,000 per day for each day such violation continues as the court may deem proper, or for both injunctive relief and penalty. Upon application for an injunction and a finding that Section 12(A) is being violated, the district court shall grant such injunction. It shall be the duty of the attorney general to bring such action, at the request of the Board, in the name of the State of Texas. (Sec. 12(B)).

X. APPEALS

Any person affected by any order, decision, determination or other act of the Board, may, within thirty days after the date on which such act is performed, or in case of an order, decision, or determination, within thirty days after the effective date thereof, file a petition in an action to review, set aside, or

suspend such order, decision, determination or other act upon the ground or grounds that the same is invalid, arbitrary or unreasonable. The venue in any or all such actions is hereby fixed exclusively in the District Court of Travis County, Texas. In a suit brought to review, suspend, or set aside any act of the Board, the trial shall be de novo, and no presumption of validity, reasonableness or presumption of any character shall be indulged in favor of the act that is involved. (Sec. 11).

2. Local Programs

- A. A local government may inspect the air and may go in and on private or public property to determine whether or not the level of air contaminants in any area of its jurisdiction meets the level set by the Board, and may make inspections in the same manner and under the same provisions and restrictions as are applicable to the Board to determine whether or not the emission from any source meet the level set by the Board for such source and whether or not a person is complying with an order, rule or regulation of the Board. (Sec. 13(B)).

The results of the local government inspection are to be sent to the Board. (Sec. 13(C)).

Authorizes a local government to enforce through its own attorney the provisions relating to injunctions and penalties. (Sec. 13(D)),

A local government may enter into cooperative agreements with other local governments to perform air pollution inspections and enforcement; to give or receive technical aid and educational services; and to transfer money from one local government to another which may be a part to the agreement for the purpose of air quality management, inspection, and enforcement. (Sec. 13(E)).

- B. An incorporated city or town may enact and enforce any ordinance not inconsistent with the provisions of this Act or the rules, regulations, or orders of the Board. (Sec. 15(B)).

Any ordinance adopted or enforced by an incorporated city or town shall be consistent with the provisions of this Act and the rules, regulations, or orders of the Board, and shall not make unlawful any condition or act permitted, approved or otherwise authorized pursuant to the Act or the rules, regulations or orders of the Board. (Sec. 15(C)).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Utah 1/

1. Air Conservation Council

I. SCOPE

Relating to air pollution control; providing for the creation in the State Department of Health of the Air Conservation Council for the State of Utah and empowering it to act in the control, abatement and prevention of air pollution; and repealing Section 76-43-2.1, Utah Code Annotated, 1953, as enacted by Chapter 188, Laws of Utah 1963.

II. DEFINITIONS

"Air contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination thereof, excluding steam and water vapors.

"Air contaminant source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

"Air pollution" means the presence in the ambient air of one or more air contaminants in quantities, of characteristics and under conditions and circumstances, and of a duration sufficient to cause or contribute to injury to human, plant, or animal life or health or to property or which unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Conservation Council.

"Ambient air" means the surrounding or outside air.

"Person" means any individual, public or private corporation, partnership, association, firm, trust, estate, the state or any department, institution, bureau, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by the law as being subject to rights and duties.

"Facility" means machinery, equipment, structures or any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. (Sec. 2).

1/ Citations refer to Chapter 47, Laws 1967.

III. ADMINISTRATIVE ORGANIZATION

Vests in the Department of Health the responsibility for the administration of this Act. (Sec. 3),

Creates within the Department, the Air Conservation Council, to be comprised of the Director of Health and eight other members appointed by the Governor with the advice and consent of the Senate. Council members are to have four year terms. (Sec. 4),

An executive secretary shall be appointed by the Council with the approval of the State Director of Public Health. (Sec. 8),

IV. POWERS AND DUTIES OF THE COUNCIL

- (1) To promulgate, adopt, amend and repeal rules and regulations regarding control, abatement, emissions and prevention;
- (2) To establish air quality standards;
- (3) To require persons engaged in operations causing air pollution to file periodic reports;
- (4) To hold hearings, compel attendance of witnesses and require production of evidence; administer oaths and take testimony;
- (5) To cause the institution of legal proceedings to secure compliance with this act;
- (6) To settle or compromise any civil action initiated to compel compliance with this Act and any rules and regulations promulgated hereunder; and
- (7) To grant variances if compliance will result in an arbitrary and unreasonable taking of property or in the practical closing of a lawful business without sufficient corresponding public benefit. (Sec. 5).

V. POWERS AND DUTIES OF THE EXECUTIVE SECRETARY

To develop programs for the prevention, control and abatement of new or existing pollution of the air resources of the state.

To advise, consult, and cooperate with other agencies or the state, the Federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this act.

To authorize any employee or representative of the department to enter at reasonable time and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution.

To encourage or conduct studies, investigations, research and demonstrations relating to air pollution and its causes, including the establishment of inventories of pollution sources.

To collect and disseminate information relating to air pollution and its prevention, control and abatement.

To enforce rules and regulations and standards as adopted or revised by the council through the issuance of orders which may be subsequently amended or revoked. Such order may include, but not be limited to: (a) prohibiting or abating discharges of wastes into the air resources of the state; (b) requiring the construction of new control facilities or any parts thereof or the modification, extension or alteration of existing control facilities or any parts thereof, or the adoption of other remedial measures to prevent, control or abate air pollution.

To review plans, specifications or other data relative to pollution control systems or any part of such systems provided in this act.

To certify to any state or federal authorities for tax purposes only of the fact of construction, installation, or acquisition of any facility, land, building, machinery.

To cooperate with any person in studies and research regarding air pollution and its control, abatement and prevention.

To represent the state with the specific concurrence of the director in all matters pertaining to interstate air pollution, including interstate compacts and other similar agreements.
(Sec. 8),

The State Board of Health may modify an action of the Council or of the executive secretary only if the Board deems such modification necessary to protect public health.

VI. VIOLATIONS

It shall be unlawful and shall constitute a misdemeanor for each day of violation, for any person to cause air pollution of any air resources of the State; or to increase the volume or strength

vote of or a quorum of the council. A record or summary of the proceedings of such hearing shall be taken together with findings of fact and conclusions of law. In any such hearing a person designated by the executive secretary shall have the power to administer oaths, examine witnesses and issue in the name of the executive secretary notice of the hearings or subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter involved in such hearing. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal by any person to obey notice of hearing or subpoena issued under this section, any district court shall have jurisdiction, upon application of the executive secretary, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court shall be punished by such court as contempt. (Sec. 11(4)).

VIII. JUDICIAL REVIEW

All final orders or determinations of the Council or the Executive Secretary are subject to judicial review by petition to a district court. Findings of fact by the Council shall be final if supported by competent evidence. (Sec. 12).

IX. INJUNCTIONS; PENALTIES

Upon failure to comply with an order the Council is authorized to initiate an action for injunctive relief. Defendant's failure to comply with a Council order creates a presumption of irreparable harm. (Sec. 13). Failure to comply with the terms of the injunction shall be deemed prima facie evidence of contempt and punishable by a fine of \$1,000 for each day of contempt. (Sec. 14).

The statute gives private parties no actionable rights. (Sec. 15(2)).

X. CONFIDENTIALITY OF RECORDS

No information relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise, and all such information shall be kept confidential. (Sec. 16).

2. Local Programs ^{1/}

Any political subdivision of the State is empowered to enact and enforce ordinances to control air pollution which are consistent with this Act. (Sec. 17, Senate Bill No. 36, approved March 14, 1967).

Any political subdivision of the State may enter into and perform with other subdivisions or with the Department of Health such contracts and agreements as deemed proper for establishing, planning, operating, and financing of air pollution programs. (Sec. 18, Senate Bill No. 36, approved March 14, 1967).

They (all cities) may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist. (Sec. 10-8-60).

The mayor of cities of the first and second class (adopting the strong mayor form of government) may, with the approval of the board of commissioners, designate and regulate the abatement of injurious and noxious weeds, garbage, refuse or any unsightly or deleterious objects or structures, and may appoint a city inspector for the purpose of carrying out the provisions of this section. (Sec. 10-6-101).

Each local board of health shall cause every nuisance dangerous to health or human life to be abated. When complaint of such nuisance is made to it, it shall forthwith cause the matter to be investigated and shall determine whether or not the alleged nuisance is detrimental to the public health or the cause of any disease or mortality.

Whenever a local board of health shall determine that a nuisance detrimental to health exists it shall in writing notify the occupant of the premises where the same may be found or, if unoccupied, the owner or agent thereof of such finding and shall order the abatement or removal of such nuisance within two days. If such nuisance is not abated or removed pursuant to such order, the board may summarily proceed to abate or remove the same, or it may cause an action to be brought in the name of the State by the county attorney for the abatement of such nuisance. (Sec. 26-5-5).

Whatever is dangerous to human life or health, and whatever renders ... air ... impure or unwholesome are declared to be nuisances and to be illegal, and every person, either owner, agent or occupant, having aided in creating or contributing to the same, or who may support, continue or retain any of them, is guilty of a misdemeanor.

^{1/} Citations refer to Utah Code Annotated 1953.

of any air contaminant in excess of the permissive discharges specified under any existing rule, or standard without first submitting to the Secretary such plans, specifications and other information necessary to carry on the increased activity; or to construct, install or operate any new contaminant source without first submitting to the Secretary such information relative to the source as the Council shall require. The design or method of manufacturing process equipment may not be specified nor required to be licensed or registered. (Sec. 9),

VII. VIOLATION PROCEEDINGS

A. Whenever the Executive Secretary determines there are reasonable grounds to believe that there has been a violation of any of the provisions of this Act, he shall eliminate the violation by conciliatory methods. If such attempts fail, he shall, with approval of the Council, give written notice to the alleged violator requiring that the matters complained of be corrected or the violator appear before the Council and answer the charges. The Council shall afford an opportunity for a fair hearing and make findings of fact and conclusions of law on the basis of evidence produced at the hearing. (Sec. 11),

B. Rulemaking

The Council, when adopting standards of quality for ambient air, shall conduct public hearings. Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards shall apply and the time, date and place of such hearing. Such notice shall be published in any newspaper of general circulation in the area affected and shall be mailed to the chief executive of the political subdivision of the area affected and to such other persons as the executive secretary has reason to believe will be affected by such classification and setting of such standards. The adoption of air quality standards or any modification or changes thereof shall be effectuated by an order of the executive secretary, following formal action of the council with respect to such standards. Such order shall be published in a newspaper of general circulation in the area affected. (Sec. 10).

C. Council Hearings

Hearings shall be conducted by the council, at a regular or special meeting, or by any examining officer designated by the council. All decisions shall be rendered by a majority.

Under this section the right to recover damages for injuries occasioned by fumes, gases, dust, smoke, foul air, and obnoxious odors, being cast upon one's property by another, in proper cases, is well established. But the rule of liability is not absolute and the law does not afford redress for every such discomfort or annoyance. Extreme rights in this regard cannot be enforced. An oil refinery reasonably operated in a location suitable therefor is not liable for inconvenience resulting to householder in neighborhood because of disagreeable odors. (Sec. 76-43-1).

The board of county commissioners may pass ordinances to control air pollution. (Sec. 17-5-77).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Vermont 1/

T. 18 § 109 provides:

"In its discretion the (State Health Commission) may exercise all the powers and authority in each town and village, which is given to a local board of health. The commissioner may likewise exercise all the power and authority of a local health officer throughout the State."

T. 18 § 606 provides:

"The (local) health officer shall make sanitary inspections when and where he has reason to suspect that anything exists which may be detrimental to the public health. He may enter any house or other building or place for the purpose of making such inspections. By written order he shall direct the destruction or removal within a specified time of unhealthful conditions or causes of sickness . . ."

T. 18 § 609 provides:

"A person who neglects or refuses to comply with a written order of a local board of health or health officer issued under this chapter, when no other penalty is provided, shall be fined not more than \$100 nor less than \$5.00. Upon such neglect or refusal, the local board of health may prevent, remove or destroy any unhealthy conditions or causes of sickness, at the expense of the town it represents, and such expense may be recovered of the person whose legal duty it was to comply with such order."

T. 18 § 610 provides:

"A local board of health shall have power and authority to abate nuisances affecting the public health, destroy, prevent or remove unhealthful conditions and causes of sickness . . ."

T. 18 § 615 provides:

"A health officer shall not order the cessation or removal of conditions creating causes of sickness . . . except with the consent and approval of the selectmen of such town or the city council of such city . . ."

1/ Citations refer to Vermont Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Virginia 1/

Air Pollution Control Act

I. GENERAL STATEMENT

Chapter 497, laws 1966, created a five member State air pollution control board, empowered to adopt rules and regulations, to grant local variances therefrom, to initiate and receive complaints, create local control districts, and to represent the State in negotiations. Court proceedings are to be heard de novo, and failure to comply with regulations is punishable by fine.

II. DEFINITIONS

- A. "Board" means the State Air Pollution Control Board, sometimes hereinafter referred to as "Board" or "State Board." (§ 10-17.10).
- B. "Air pollution" means the presence in the outdoor atmosphere of one or more substances put there by man or man-made devices in concentration sufficient to cause an unreasonable interference with human, plant or animal life or the reasonable use of property. (§ 10-17.10).
- C. "Owner" means the State, a county, sanitary district, municipality, a public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other State or county, person or individual, or group of persons or individuals, acting individually or as a group. (§ 10-17.10).

III. VIRGINIA AIR POLLUTION CONTROL BOARD

A. Composition and Organization

The Board consists of five members appointed by the Governor and confirmed by the General Assembly for four year terms. The first appointees serve staggered terms.

Members are selected from able citizens of the State without regard for political affiliation. No officer, employee, or representative of any industry or political subdivision affected by the Board's decisions shall be appointed.

1/ Citations refer to Title 10 of the Code of Virginia, 1966 Suppl.

Members receive no compensation but are paid \$20 per day while attending meetings plus per diem expenses.

The Board elects its own Chairman and employ such people as it deems necessary. (§ 10-17.11 to 17.14).

The Board meets at least once every three months, and separate meetings may be called by the Chairman or upon written request of any two members. Five days notice is given the members prior to any meetings. (§ 10-17.17).

The Board keeps complete records of all proceedings, a copy of which is open for public inspections. All rules and regulations are to be filed with the Secretary of State at least 30 days before date of effect. (§ 10-17.16).

The Board makes, or has made, inspections and investigations and other things necessary to implement the law. (§ 10-17.17).

B. Powers and Duties

The Board has the power or duty:

- (1) To control and regulate its internal affairs, conduct research programs in regard to cause, effects and hazards of air pollution and educate the populace in regard thereto, to cooperate with and receive money from Federal and State governments and other sources, to develop a program for air pollution source study, abatement, control, to cooperate with various governmental agencies and private groups and industries. (§ 10-17.18(a)).
- (2) To formulate, adopt, promulgate, amend and repeal rules and regulations in regard to abating, controlling, prohibiting air pollution in the State or any particularly affected area. Such rule, order, etc., requires public hearing with 30 day notice and becomes effective only after 60 days of its adoption. (§ 10-17.18(b)).
- (3) To grant local variances from any rule or regulation by issuing an order to this effect after holding a hearing in the locality. (§ 10-17.18(c)).
- (4) To initiate and receive complaints, hold hearings, enter orders, institute legal proceedings. (§ 10-17.18(d)).

Virginia -- Continued

- (5) To consider all facts and circumstances in regard to the degree of injury to health, use of property, the activity's social and economical value and its suitability to the affected area, the practicality of eliminating the discharge. (§ 10-17.18(a)).
- (6) To create local air pollution control districts. (§ 10-17.19(a)).
- (7) To name technically qualified citizens to State advisory committees on air pollution. (§ 10-17.20).
- (8) To request owner, believed to cause or about to cause air pollution, to furnish certain plans, specifications, information. When samples are taken for analysis, a duplicate analytical report is to be furnished to person supplying sample. (§ 10-17.21).
- (9) To enter any establishment or upon any property at reasonable times to obtain information or conduct surveys or investigations. (§ 10-17.22).

IV. EXECUTIVE SECRETARY

The Board is authorized to employ an Executive Secretary who shall devote his full time to his duties. He shall have those administrative powers conferred upon him by the Board. (§ 10-17.14).

V. PROCEDURE

A. Local air pollution control districts.

- (1) Districts may be established on the Board's discretion or by request of the governing bodies of the areas in question. A district may comprise any combination or parts of a city or county. (§ 10-17.19(a)).
- (2) Each district shall have a local air pollution control committee. The members are appointed by the State Board, which determines the number, from a list of recommended nominees. When two or more localities are involved, the members shall be apportioned among them. Any compensation or reimbursement of the members shall be borne by the locality or localities. (§ 10-17.19(b)).

- (3) All local ordinances, rules, regulations in regard to air pollution in these districts shall be superseded by the rules and regulations of the State Board. (§ 10-17.19(c)).
- (4) Locality governing bodies may appropriate funds for local committee use. (§ 10-17.19(d)).

B. Public Rehearing

- (1) An aggrieved party may petition the Board for a rehearing any time prior to the effective date of the rule, regulation, or order. (§ 10-17.25).
- (2) The Board may determine that the issues raised by the petition have been adequately considered and confirm the previous rule without hearing. (§ 10-17.26).
- (3) If the Board feels that further testimony is not necessary, they may reconsider and redetermine the original cause without setting a time and place for any further hearing. (§ 10-17.26).
- (4) The Board may determine that a rehearing is necessary to determine the issues raised and order thereon and hear such additional evidence as may be offered on either side. Ten days notice shall be given the applicant before the hearing and to other interested persons. (§ 10-17.26).
- (5) A petition for a hearing or rehearings shall be considered denied by the Board unless they take action upon it within 30 days. (§ 10-17.26).

C. Confidential Information

Any information as to secret processes, formulas or methods of manufacture or production shall not be disclosed in public hearing before the Board, and shall be kept confidential. (§ 10-17.21).

VI. JUDICIAL REVIEW

- A. All rules, regulations, orders or requirements are subject to review in the Circuit Court of the City of Richmond. (§ 10-17.27).

Virginia -- Continued

- (1) Such cases shall be brought by petition within 60 days after the date of the offending rule, regulation, etc., or within 30 days after the denial of an application for rehearing or of the rendition of the decision of the Board. (§ 10-17.27).
 - (2) The petitioner must file a copy of the petition on the Executive Secretary or any Board member within 15 days after the filing of original petition. (§ 10-17.27).
 - (3) The Board shall be named as a party defendant to such petition. (§ 10-17.27).
 - (4) The filing shall operate to suspend the requirement, rule, regulation or order until the validity, thereof, has been finally adjudicated. (§ 10-17.27).
 - (5) The judge shall hear the proceeding de novo. (§ 10-17.27).
- B. The Commonwealth or any aggrieved party has the right to appeal to the Supreme Court of Appeals. (§ 10-17.28).

The Attorney General must represent the Board. (§ 10-17.28).

VII. PENALTIES

- A. Any owner failing to comply with any provision of this act, or with any order of the Board or a court, shall be liable to a fine of not less than \$50 nor more than \$500 for each violation. (§ 10-17.29).
- B. Each day of continued violation after conviction shall constitute a separate offense and may subject the business or establishment causing pollution to abatement as a nuisance. (§ 10-17.29).

VIII. CONSTRUCTION

- A. Until the authority of any local governing body is superseded existing ordinances shall continue in force except when in conflict with a rule or regulation of the Board in which case the rule of the Board shall govern. (§ 10-17.30).
- B. The governing body of any locality shall first obtain the approval of the State Board as to the acceptable provisions of a proposed ordinance or amendment. (§ 10-17.30(b)).

Virginia -- Continued

- C. The provisions of this Act do not apply to employer-employee relations. (§ 10-17.18(g)).

IX. EFFECTIVE DATE

Approved April 4, 1966.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Virgin Islands 1/

I. POLICY STATEMENT

Declares the policy of the Virgin Islands to preserve, protect, maintain and improve the air resources of the Islands so as to promote health, safety and welfare, prevent injury to human health, plant and animal life and property, foster the convenience and comfort of its inhabitants and to the greatest degree practicable, facilitate the enjoyment of the natural attractions and resources of the Islands. It is the express objective of this law to provide for the prevention, abatement and control of new or existing air pollution; and to cooperate with other agencies of the Islands and the Federal Government in carrying out these objectives. (§ 201).

II. DEFINITIONS

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or any combination thereof, in sufficient quantities and of such characteristics and duration as is or is likely to be injurious to public welfare, to the health of human, plant or animal life, or to property, or which unduly interferes with the enjoyment of life or property.

"Air contaminant" means any dust, fumes, gas, mist, smoke, vapor, odor, or particular matter or any combination thereof.

"Person" means any individual, partnership, association, corporation or other entity, and includes any officer or governing or managing body of such entity. (§ 202).

III. ADMINISTRATIVE ORGANIZATION

Designates the Department of Health as the Air Pollution Control Agency of the Virgin Islands for the purpose of establishing and administering or supervising the administration of any plan required as a condition for receipt of funds for territorial expenditure for air pollution control purposes under any Acts of Congress or any administrative rulings pursuant to such Acts. The Department, through the Commissioner of Health, is authorized

1/ Citations refer to Chapter 9, Title 12 of the Virgin Islands Code, as enacted by Chapter 1977, Laws 1967.

to take all action necessary or appropriate to secure to the Islands the benefits of any of the aforesaid acts, and to receive, administer, expend and distribute any funds that may be available under any Federal law or from any other source, for the purposes of air pollution control. The Commissioner shall carry out the functions and duties conferred on the Department by this Act and is further authorized to comply with all other administrative requirements, not inconsistent with the laws of the Territory, imposed as a condition to receiving Federal grants. (§ 203(a)).

The Governor is authorized to appoint any advisory commissions as may be required as a condition of eligibility for benefits under any Federal law relating to air pollution control, to consult with the Department of Health or its Commissioner in carrying out the purposes of this Act. Each member of any such Commission shall serve at the pleasure of the Governor and shall receive no compensation for their services. (§ 203(b)).

IV. POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH

- A. To exercise general supervision of the administration and enforcement of this law and all rules and regulations and orders promulgated thereunder;
- B. To develop comprehensive programs for the prevention, control and abatement of new or existing air pollution;
- C. To advise, consult, and cooperate with other agencies of the Islands, the Federal Government, other States and interstate agencies, and with affected groups and industries in furtherance of the purposes of this Act;
- D. To accept and administer loans and grants from the Federal government and from other sources, for carrying out any of its functions;
- E. To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air pollution and the causes, prevention, control and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this Act; to disseminate information relating thereto, and to prepare, develop and adopt a comprehensive plan or plans for the prevention, control and abatement thereof;

Virgin Islands -- Continued

- F. To adopt, modify, repeal, and promulgate, after due notice and hearing, and to enforce such rules and regulations as may be necessary to prevent, control and abate existing or potential air pollution;
- G. In connection with the discharge or exercise of any of its functions, duties, or powers, to hold such hearings, to issue notice of hearings, and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer such oaths, and to take such testimony as may be necessary; and
- H. To exercise all incidental powers necessary to carry out the purposes of this Act. (§ 204).

V. REGISTRATION

Persons engaged in operations which the Commissioner finds may result in air pollution shall, if required by regulation, register with the Department and file with the Department reports containing information as to location, size and height of pollutant outlet; rate, duration and composition of pollutant emission; and such other information as the Commissioner may require. (§ 205).

VI. PERMITS

The Commissioner may, by regulation, prohibit the installation, alteration or use of any machine, equipment, device or other article which he finds may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained.

The Commissioner may require that applications for permits be accompanied by plans, specifications, and other information deemed necessary by the Department.

The Commission, by rules and regulations, shall provide for the issuance, suspension, revocation and renewal of any permits which he may require.

The Department of Public Works, before issuance of a permit for the erection, construction, reconstruction, alteration or occupancy of any building or structure, shall submit the applications and plans and specifications therefor to the Commissioner for review and approval if such plans and specifications provide for any fuel burning or refuse-burning equipment, or any chimney or smoke stack, or occupancy of any building for industrial purposes.

No building permit shall be issued by the Department of Public Works, if the Commissioner, after review of application therefor finds that the building or structure will violate the provisions of this Act. Failure of the Commission to approve or reject such plans and specifications within 30 days of submission by the Department of Public Works shall be deemed approval thereof. (§ 206).

VII. INSPECTIONS

Any duly authorized officer, or representative of the Commissioner may enter and inspect any property, or place for the purpose of investigating either an actual or suspected source of air pollution or of ascertaining the State of compliance with this Act and regulations enacted pursuant thereto. (§ 207).

VIII. EMISSIONS PROHIBITED

The Commission shall establish by territory-wide regulations limiting the levels, concentrations, or quantities of emissions of various air contaminants from any source necessary to protect the public health.

In any area where the concentration of air pollution sources or of population, or where the nature of the economy or of land and its uses so require, the Commissioner may fix more stringent requirements governing the emissions of air contaminants in that area (§ 208).

IX. ENFORCEMENT

Whenever the Commissioner has reason to believe that a violation of any provision of the Act or rule or regulation pursuant thereto has occurred, he may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision

of the Act or rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that necessary corrective action be taken within a reasonable time. Any such order shall become final, unless no later than thirty days after the date such order is served, the person or persons named therein request in writing a hearing before the Commissioner. In lieu of such order, the Commissioner may require that the alleged violator or violators appear before the Commissioner for a hearing at a time and place specified in the notice and answer the charges complained of, or the Commission may initiate appropriate action for the recovery of a penalty.

After such hearing, the Commission shall affirm, modify, or rescind his order or issue an appropriate order or orders for the prevention, abatement or control of air pollution involved. Such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the air pollution.

Nothing in this Act shall prevent the Commissioner from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. (§ 209).

X. EMERGENCY PROCEDURE

If the Commissioner finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the Commissioner, with the concurrence of the Governor, shall order the immediate reduction or discontinuance of the emission of air contaminants. Upon issuance of an order the Commissioner shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held. Not more than 24 hours after commencement of such hearing, and without adjournment thereof, the Commissioner shall affirm, modify, or set aside the order.

In the absence of a generalized condition of air pollution, but if the commissioner finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth above shall apply.

Nothing in this section shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office. (§ 210).

XI. EXEMPTIONS

Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the Commissioner for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of discharges of air pollutants. The Commissioner may grant such exemption or partial exemption if he finds that:

- A. The discharges occurring or proposed to occur do not constitute a danger to public health or safety; and
- B. Compliance with the rules or regulation from which exemption is sought would produce serious hardship without equal or greater benefits to the public.

No exemption shall be granted except after public hearing and until the Commissioner has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

No exemption shall be granted for a period to exceed one year, but any such exemption may be renewed for like periods if no complaints are made to the Commissioner on account thereof or, if such complaint having been made and duly considered at a public hearing, the Commissioner finds that renewal is justified.

An exemption, or a renewal of an exemption shall not be a right of the applicant or holder thereof but shall be in the discretion of the Commissioner. However, any person adversely affected by an exemption or renewal granted by the Commissioner may obtain judicial review thereof by filing a petition for a writ of review in the municipal court within 15 days after the date of the decision complained of in accordance with the Rules of the Municipal Court of the Virgin Islands.

Virgin Islands -- Continued

No exemption or renewal granted shall be construed to prevent or limit the application of the emergency provisions and procedures of this Act to any person or his property. (§ 211).

XII. HEARINGS AND JUDICIAL REVIEW

No rule or regulation and no amendment or repeal thereof shall take effect except after public hearing.

Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order.

Any person aggrieved by any order, except the denial of an exemption, of the Commissioner may have judicial review thereof by filing a petition for a writ of review within 15 days after the date of the decision complained of in accordance with the Rules of the Municipal Court of the Virgin Islands. (§ 212).

XIII. CONFIDENTIALITY OF RECORDS

Any records or other information obtained by the Commissioner concerning one or more air pollution sources, which records or information relate to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the Commissioner and other departments, agencies, and officers of the Government of the Virgin Islands, unless such owner or operator shall expressly agree to their publication. Such records may be used by any department, agency or officer of the Government of the Virgin Islands in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential. (§ 213).

XIV. PLANNING AND ZONING

The Commissioner, on request of the Planning Board or on his own initiative, shall gather and supply information concerning air pollution which is relevant to planning and zoning activities.

The Planning Board shall bring to the attention of the Commissioner all proposed zoning actions pending for his review, and based upon his consideration of the consequences of such actions on the atmosphere, shall make a report, including recommendations, to the Planning Board with respect to those pending actions which the Commissioner deems to have a significant relationship to air pollution. The Planning Board shall take no proposed action inconsistent with a specific finding by the Commissioner that the same would result in air pollution. (§ 214).

XV. PENALTIES AND CIVIL RELIEF

Any person who violates any provision of this Act, or any rule or regulation in force pursuant thereto shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense.

Action pursuant to the above paragraph shall not be a bar to enforcement of this Act, rules and regulations in force pursuant thereto, and orders made pursuant to this Act, by injunction or other appropriate remedy, and the Attorney General shall have power to institute and maintain in the name of the Government of the Virgin Islands any and all such enforcement proceedings.

Nothing in this Act shall be construed to abridge, limit or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor. (§ 215).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Washington 1/

1. Air Pollution Control Act

I. POLICY STATEMENT

To secure and maintain such levels of air quality as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the State and facilitate the enjoyment of the natural attractions of the State.

Regional air pollution control programs are to be encouraged and supported as essential instruments for the securing and maintenance of appropriate levels of air quality. (§ 1).

II. DEFINITIONS

- (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.
- (2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property.
- (3) "Person" means and includes an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

III. ADMINISTRATIVE ORGANIZATION

A State Air Pollution Control Board is established in the Department of Health. The Board is to consist of nine members, eight appointed by the Governor and the ninth being the State Director of Health. Members shall serve at the pleasure of the Governor. The Board shall employ an Executive Director. (§ 44).

1/ Citations refer to Chapter 238, Laws 1967 amending R.C.W. chapter 70.94.

The Director of Health is to provide staff support for the State Board. (§ 45).

IV. POWERS AND DUTIES

- A. (1) Adopt, amend and repeal its own ordinances, resolutions, or rules and regulations, as the case may be, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.32 RCW.
- (2) Hold hearings relating to any aspect of or matter in the administration of this chapter and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.
- (3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.
- (4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.
- (5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.
- (6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.
- (7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.
- (8) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control.
- (9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

- (10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the State, other political subdivisions, industries, other States, interstate or interlocal agencies, and the United States Government, and with interested persons or groups.
- (11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.
- (12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States Government for the purpose of carrying out any of the functions of this chapter. (§ 46(1)).
- (13) The State Board, in addition to any other powers vested in it by law after consideration at a public hearing may:
 - a. Adopt ambient air quality goals;
 - b. Adopt by rule and regulation requirements for the control or prohibition of emissions to the outdoor atmosphere of dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions; or combinations thereof, which it determines most feasible.

- (14) Cooperate with appropriate United States, State, interstate, or international agencies with respect to control of air pollution and contamination, or for the formulation of interstate compacts or agreements;
- (15) Conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere;
- (16) Enforce the requirements for the control or prohibitions of emissions;
- (17) Encourage local units of government to handle air pollution problems; (§ 46)and
- (18) Delineate appropriate air pollution regions throughout the State (§ 4(5)).

B. State Board Authority Over Local Authorities

The State Board may, at any time and on its own motion, hold a hearing upon due notice to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the State. If at such hearing the State Board finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority or a regional authority, it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority or a regional authority: However, if at such hearing the State Board determines that the activation of an authority or a regional authority or the enactment of ordinances or resolutions relating to air pollution by individual cities, towns, or counties is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the State Board will exercise jurisdiction for the control and/or prevention of air pollution. (§ 52).

At any time after a city, town or county has had in effect for no less than one year an ordinance or resolution dealing with the prevention, abatement or control of air pollution, or at any time after an authority or regional authority has been activated for no less than one year, the Board may conduct a hearing to determine whether or not the program of such city, town, county, authority or regional authority is being carried out in good faith and is as effective as possible. If the Board finds the program is not being carried out in good faith and/or as effective as possible, it shall set forth in a report to the appropriate city, town, county, authority or regional authority:

- (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and
- (2) Guidelines to assist in carrying out the Board's recommendations. (§ 55).

If after 30 days from the date of such report the Board finds no action is being taken it may declare as null and void any or all ordinances, resolutions, rules or regulations of such city, town, county, authority or regional authority relating to the control and/or prevention of air pollution and at such time the Board shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the area concerned. (§ 56).

V. VIOLATIONS; PROCEEDINGS

It is unlawful for any person to knowingly cause or permit air pollution in violation of the State or any ordinance, resolution, rule or regulation promulgated thereunder (§ 3).

Having reason to believe that any provision of this chapter or any ordinance, regulation, rule or regulation relating to the control or prevention of air pollution has been violated, the governing body or Board or control officer may cause written notice to be served upon the alleged violator or violators.

Whenever the Department of Health has reason to believe a violation has been committed it may cause written notice to be served upon the alleged violator or violators. In lieu of an order the Department may require the violator or violators to appear before the Air Pollution Control Board for a hearing, or in addition to or in place of an order or hearing the Department may initiate action for a restraining order, injunction, fine or imprisonment, or accept assurance of discontinuance.

Orders issued by the Department shall become final, unless the person aggrieved petitions for a hearing before the Board. If, after hearing, the Board finds that a violation has occurred or is occurring, it shall affirm or modify the previously issued order. An order issued by the Board after a hearing shall become final unless a petition is filed for judicial review, and shall be stayed pending review unless, after notice and hearing, the superior court finds an emergency. The reviewing court may affirm or reverse the decision of the governing body or Board. (§ 48).

In case of emergency the Director of Health may issue an order to the alleged violator or violators to:

- (1) Immediately discontinue or reduce the emission of contaminants; or
- (2) Appear before the Director or Board for a hearing. (§ 57).

.. ASSUMPTION OF JURISDICTION

If the Air Pollution Control Board finds, after public hearing, that the control of a particular type or class of contaminant source is beyond the reasonable capability of the local or regional control agencies, it may, by order, assume and retain jurisdiction over such source and may adopt and enforce rules and regulations to control and/or prevent the emission of air contaminants from such source. (§ 53).

[. HEARINGS

In all instances where the State Board is permitted or required to hold hearings under the provisions of this 1967 amendatory act, such hearings shall be held before the State Board, or the State Board may appoint a hearing officer, who shall be an attorney admitted to practice in the State. (§ 49(1)).

A duly appointed hearing officer shall have all the powers, rights and duties of the State Board relating to the conduct of hearings. (§ 49(2)).

At the conclusion of a hearing at which he has presided, the hearing officer shall prepare written findings of fact and conclusions of law, and a recommended decision. Parties to the proceeding shall be notified of the recommended decision in person or by mail. A copy of the decision and accompanying findings and conclusions shall be delivered or mailed to each party or to his attorney of record. (§ 49(3)).

2. County and Regional Programs

Creates in each county an air pollution control authority. The Board of County Commissioners of any county other than a first class, class A or class AA county (which have active authorities) in which there is an inactive authority may hold a hearing to determine the need for an authority to function and exercise its powers as an activated authority. (§ 4, 5). The Boards of County Commissioners of counties whose boundaries are within those of a regional authority may hold hearings to determine the need for a regional authority to function and exercise its powers as an activated regional authority. (§ 5). The Boards of two or more contiguous counties may merge any combination of their inactive or activated authorities to form one activated authority. (§ 6).

Five regional air pollution control authorities are created. (§ 8).

Regional Authorities are classified by population. (§ 9).

Any local or regional air pollution control program formed as a district prior to the effective date of this Act which is composed of one or more counties and the cities and towns therein, and whose boundaries are coextensive with the boundaries of one or more counties, shall, upon the effective date of this Act, be considered an activated authority, provided that within six months of the effective date of this Act the Board of Directors shall be reorganized to conform thereto.

The Air Pollution Control Board may hold a hearing to determine the necessity of activating an authority for the prevention, abatement and control of air pollution. If the Board determines that the activation of an authority or a regional authority or the enactment of ordinances or resolutions by individual cities, towns, or counties is not practical or feasible because a local or regional program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary, it may assume jurisdiction. All expenses incurred by the Board in assuming such jurisdiction shall constitute a claim against such county.

All first class regional authorities existing on July 1, 1969 shall be activated on that date; and any regional authority which becomes a first class authority after July 1, 1969, shall be activated within 60 days after a determination that it has a population of at least one million. (§ 10(1)).

Washington -- Continued

County Boards may merge, (§ 11) and an activated Authority is a municipal corporation. (§ 14).

3. Local Authority

I. ADMINISTRATION

The governing body of each Authority or Regional Authority shall be known as the Board of Directors. (§ 21(1)).

In the case of an Authority comprised of one county the Board shall be comprised of two appointees of the city selection committee as hereinafter provided at least one of whom shall represent the city having the most population in the county, and two county commissioners to be designated by the Board of County Commissioner. In the case of an Authority comprised of two or three counties, the Board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided, who shall represent the city having the most population in such county, and one county commissioner from each county to be designated by the Board of County Commissioners of each county making up the Authority. In the case of an Authority comprised of four or five counties, the Board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided who shall represent the city having the most population in such county, and one county commissioner from each county to be designated by the Board of County Commissioners of each county making up the Authority. In the case of an Authority comprised of six or more counties, the Board shall be comprised of one county commissioner from each county to be designated by the Board of County Commissioners of each county making up the Authority, and one appointee from each city with over one hundred thousand population to be appointed by the Mayor and City Council of such city. (§ 21(2)).

In the case of a Regional Authority comprised of those counties as defined in section 8 of this 1967 amendatory act, the Board shall be comprised of those appointees and/or commissioners as provided in subsection (3) of this section. (§ 21(3)).

II. POWERS AND DUTIES

The governing body of any city, town or county, the Board of any activated Authority or activated Regional Authority shall have power to:

- (1) Adopt, amend and repeal ordinances, resolutions, or rules and regulations;
- (2) Hold hearings and in connection therewith issue subpoenas to compel attendance of witnesses and the production of evidence, administer oaths and take testimony;
- (3) Issue and enforce necessary orders;
- (4) Require access to information specific to the control, recovery or release of air contaminants into the atmosphere;
- (5) Secure necessary services;
- (6) Prepare and develop a comprehensive plan or plans for the prevention, abatement or control of air pollution;
- (7) Encourage voluntary cooperation;
- (8) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control;
- (9) Collect and disseminate information and conduct educational and training programs;
- (10) Advise, consult, cooperate and contract with agencies and departments and educational institutions of the State, other political subdivisions, industries, other States, interstate or interlocal agencies, the United States Government and other interested persons or groups;

- (11) Consult with persons proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof;
- (12) Accept, receive, disburse and administer grants, funds or gifts from any sources; and
- (13) Classify contaminant sources (§ 25);
- (14) Levy taxes upon referendum (§ 15);
- (15) With the approval of the Department of Health, apply for Federal aid (§ 27);
- (16) Appoint a control officer (§ 30);

The rules and regulations hereafter adopted by an authority or a regional authority shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority or regional authority in all matters relating to the control and enforcement of air pollution as contemplated by this Act: Provided, However, That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: Provided further, That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer-employee relationships relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the Authority or Regional Authority. (§ 38).

III. ADVISORY COUNCIL

The governing body of any city, town or county appointing a control officer, or the Board of any Authority or Regional Authority, shall appoint an air pollution control Advisory Council to advise and consult with such body or Board, and the control officer in effectuating the purposes of this chapter. The Council shall consist of five appointed members who are residents of the city, town, county, Authority or Regional Authority and who are preferably skilled and experienced in the field of air pollution control,

two of whom shall serve as representatives of industry. The Mayor of such city, or town, the Chairman of the Board of County Commissioners of any such county, or the Chairman of the Board of any such Authority or Regional Authority, as the case may be, shall serve as ex officio member of the Council and be its Chairman. Council members shall serve without compensation but may be allowed actual expenses incurred in the discharge of their duties. (§ 41).

IV. COMMON POWERS

Cities, towns, counties, Authorities, Regional Authorities and the State Board may classify air contaminant sources according to levels and types of emissions and other characteristics which cause or contribute to air pollution and require registration and/or reports. (§ 28).

The State Board or the governing body of any Authority or Regional Authority may require notice of the establishment of classes it has specified of new air contaminant sources. (§ 29(1)).

If such notice is given to either the governing body or Board or to the State Board, further notice need not be given to any governing body or Board or the State Board. Within thirty days of its receipt of such notice, the State Board or the governing body or Board may require, as a condition precedent to the establishment of the air contaminant source covered thereby, the submission of plans, specifications, and such other information as it deems necessary in order to determine whether the proposed establishment will be in accord with applicable rules and regulations in force pursuant to this Act. If within thirty days of the receipt of plans, specifications or other information required pursuant to this section the State Board or the governing body or Board determines that the proposed construction, installation or establishment will not be in accord with this chapter or the applicable ordinances, resolutions, rules and regulations adopted pursuant thereto, it shall issue an order for the prevention of the construction, installation or establishment of the air contaminant source or sources. Failure of such order to issue within the time prescribed herein shall be deemed a determination that the construction, installation or establishment may proceed: Provided, That it is in accordance with the plans, specifications or other information, if any, required to be submitted.

Nothing in this section shall be construed to authorize the State Board or the governing body or Board to require the use of emission control equipment or other equipment, machinery or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

Any features, machines and devices constituting parts of or called for by plans, specifications or other information submitted pursuant to subsection (1) hereof shall be maintained in good working order.

The absence of an ordinance, resolution, rule or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his obligation to comply with any emission control requirements or with any other provision of law. (§ 29).

In connection with the subpoena powers:

- (1) In any hearing the governing body or Board or the State Board, and their authorized agents:
 - a. shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;
 - b. may issue a subpoena upon their own motion.
- (2) The subpoena powers shall be State-wide in effect.
- (3) Witnesses appearing under the compulsion of a subpoena in a hearing before a governing body or Board or the State Board shall be paid the same fees and mileage that are provided for witnesses in the courts of this State. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the governing body, Board, or State Board, shall be paid by the governing body, Board, or State Board. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

- (4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the governing body, Board or State Board shall file a written report with proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the governing body, Board or State Board and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.
- (5) The State Board may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the Act. (§ 26).

V. VARIANCES

Any person owning or in control of any plant, building, structure, establishment, process or equipment may apply to the State Board or the governing body or Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. A variance may be granted, but only after public hearing or due notice, upon finding that:

- (1) The emissions do not endanger health and safety; and
- (2) Compliance with the rules or regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public. (§ 31).
 - a. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control

of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the State Board or governing body or Board may prescribe.

- b. If the application for variance shows that there is no automobile fragmentizer in the State within a reasonable distance of the wrecking yard for which the variance is sought, a variance will be granted for a period not to exceed three years for commercial burning of automobile hulks, subject to such conditions and hours during which burning of such hulks may be carried out: Provided, however, That any variance granted hereunder shall be of no force and effect after July 1, 1970.
- c. If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the State Board or governing body or Board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.
- d. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in item a., b., and c., of this subparagraph, it shall be for not more than one year. (§ 31(3)).

- (3) Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the State Board or governing body or Board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the State Board or governing body or Board finds that renewal is justified. No renewal shall be granted except on application. (§ 31(4)).

VI. INVESTIGATIONS

For the purpose of investigating conditions specific to the control, recovery or releases of air contaminants into the atmosphere, a control officer, the Director of the State Department of Health or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the Director of Health, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. (§ 32).

VII. CONFIDENTIALITY

Whenever any records or other information furnished to or obtained by the State Board, or by the governing body of any city, town or county or the Board of any Authority or Regional Authority, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the State Board or the governing body or Board. Nothing herein shall be construed to prevent the use of records or information by the State Board and the governing body or Board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: Provided, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section. (§ 33).

VIII. VIOLATIONS

Whenever the governing body or Board or the control officer has reason to believe that any provision of this chapter or any ordinance, regulation, rule or regulation relating to the control or prevention of air pollution has been violated, such governing body or Board or control officer may cause written notice to be served upon the alleged violator or violators. The notice may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the governing body or Board or the control officer may require that the alleged violator or violators appear before the governing body or Board for a hearing at a time and place specified in the notice. (§ 34).

- (1) Any order issued by the governing body or Board or by the control officer, which is not preceded by a hearing, shall become final unless, no later than fifteen days after the date the notice and order are served, the person aggrieved by the order petitions for a hearing before the governing body or Board. Upon receipt of the petition, the governing body or Board shall hold a hearing after no less than fifteen days prior notice to petitioning parties. (§ 35(1)).
- (2) If, after a hearing held as a result of a petition to the governing body or Board by a person aggrieved by an order, the governing body or Board finds that a violation has occurred or is occurring, it shall affirm or modify the order previously issued, or if the finding made is that no violation has occurred or is occurring, the order shall be rescinded. If, after a hearing held in lieu of an order, the governing body or Board finds that a violation has occurred or is occurring, it shall issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective actions as may be appropriate. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions. (§ 35(2)).

IX. APPEALS AND FINALITY OF ORDERS

Any order issued by the governing body or Board after a hearing shall become final unless no later than thirty days after the issuance of such order, a petition requesting judicial review is filed in the superior court of the county in which the violation is alleged to have occurred or is alleged to be likely to occur. Such order shall then be subject to appeal and to trial de novo on the record in the superior court, (§ 36) and shall be stayed pending appeal unless after notice and hearing, the superior court shall determine that an emergency exists which is of such nature as to require that such order be in effect during the pendency of such hearing or appeal. (§ 37).

X. EXCLUSIONS

The Act does not apply to smoke from fires set in the course of any forest harvest operation or to abate a forest fire hazard, or from fires set by or permitted by any public officer if such fire is set or permission given in the performance of the official duty of such officer, for the purpose of weed abatement, the prevention of a fire hazard, or the instruction of public employees in the methods of fighting fires which is, in the opinion of such officer, necessary, or from fires set pursuant to permit on property used for industrial purposes for the purpose of instruction of employees in methods of fighting fire.

The Act does not apply to smoke from agricultural fires set by, or permitted by, the county agricultural agent of any county, if such fire is set or permission given in the performance of the official duty of such county agricultural agent for the purpose of disease prevention. (§ 42).

XI. FINANCIAL ASSISTANCE

Any activated Authority or activated Regional Authority may apply to the Board for State financial aid in an amount not to exceed 50% of the locally funded portion of the annual operating cost of such Authority or Regional Authority. (§ 51).

XII. EMERGENCIES

(1) Any other provisions of law to the contrary notwithstanding, if the Director of the State Department of Health finds that any person is causing or contributing to air pollution in any part of the State, regardless of whether or not such action is taking place within the geographical area of jurisdiction of a local or regional Authority which has in force an air pollution control program, and that such pollution creates an emergency which requires immediate action to protect the public health or safety, the Director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either:

- a. immediately discontinuing or reducing emission of air contaminants, or
- b. appearing before the Director (or State Board) at the time and place specified in said written order for the purpose of a hearing pertaining to the alleged pollution in said written order.

The responsible person or persons should be afforded not less than twenty-four hours notice of such a hearing. The order issued by the Director (or State Board) following such hearing shall be subject to judicial review. In the event that the responsible person or persons do not forthwith comply with the order issued by the Director (or State Board) following such hearing or timely seek judicial review thereof, the Attorney General, upon request of the Director (or State Board), shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the Commission.

- (2) Nothing in this section shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or Constitutional provision, or inheres in the office. (§ 57).

XIII. INJUNCTIONS; PENALTIES

Whenever any person has or is about to engage in any acts or practices which or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or Board of Directors of an Authority or Regional Authority or the State Board may petition the superior court of the county in which the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or other appropriate order. (§ 60). Provides for fines of \$100 to \$1000 and/or imprisonment up to one year for violations committed. (§ 61).

As an additional means of enforcing this chapter, the governing body or Board may accept an assurance of discontinuance of any act or practice deemed in violation of this Act or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation for the purpose of securing any injunction or other relief from the superior court. (§ 62).

4. Taxation 1/

I. DEFINITIONS

"Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. (§ 1(1)a).

"Industrial waste" shall mean any liquid, gaseous, radioactive or solid waste substance or combinations thereof resulting from any process of industry, manufacture, trade or business, or from the development or recovery of natural resources. (§ 1(2)).

"Treatment works" or "control device" shall mean any machinery, equipment, structure or property which is installed, constructed or acquired for the primary purpose of controlling air pollution and shall include, but shall not be limited to such devices as precipitators, scrubbers, towers, filters, baghouses, incinerators. (§ 1(3)).

II. GENERAL PROVISIONS

A pollution control tax exemption and credit certificate may be applied for prior to December 31, 1969 (§ 1(5)), by an application filed with the State Tax Commission. (§ 2).

A. The State Tax Commission will issue a certificate after the application is approved by the air pollution control agency within whose jurisdiction the facility is or will be located.

(1) Such approval shall be given when it is determined that the facility is designed and is operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air and that the facility is suitable, reasonably adequate, and meets the intent and purposes of the State air pollution control laws.

1/ Citations refer to Chapter 139-X, Laws 1967

(2) In making such determination, the appropriate control agency shall afford to the applicant an opportunity for a hearing: but if the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local or regional air pollution control board pursuant to rules and regulations established by that board. (§ 3).

B. If a certificate is obtained prior to the due date for payment of a sales tax, no sales tax is owed on the original acquisition of a facility by a certificate holder. (§ 5(1)).

(1) Subsequent to the effective date of this Act the holder of the certificate may, in lieu of accepting the tax exemption provided for in this section, elect to take a tax credit in the total amount of the exemption for the facility covered by such certificate against any future excise taxes pursuant to chapters 82.04, 82.12 and 82.16 RCW. (§ 5(2)).

C. Application

The application shall contain the final cost figures for the installation of the facility and reasonable supporting documents and other proof as required by the State Tax Commission. In the event such facility is not already covered by a certificate issued for the purpose of authorizing the tax exemption or credit provided for in this Act, the Commission shall seek the approval of the facility from the appropriate control agency. The Commission shall determine the final cost of the pollution control facility and issue a supplement to the existing certificate or an original certificate stating the cost of the pollution control facility: Provided, That the cost of an existing pollution control facility shall be the depreciated value thereof at the time of application filed pursuant to this section.

D. When the operation of a facility has commenced and a certificate pertaining thereto has been issued, a credit may be claimed against excise taxes. The amount of such credit shall be two percent of the cost of a facility covered by the certificate for each year the certificate remains in force. Such credits shall be cumulative and shall be subject only to the following limitations:

- (1) No credit exceeding fifty percent of the taxes payable under chapter 82.04, 82.12 and 82.16 RCW shall be allowed in any reporting period;
- (2) The net commercial value of any materials captured or recovered through use of a facility shall, first, reduce the credit allowable in the current reporting period and thereafter be applied to reduce any credit balance allowed and not yet utilized.
- (3) The total cumulative amount of such credits allowed for any facility covered by a certificate shall not exceed fifty percent of the cost of such facility.
- (4) The total cumulative amount of credits against State taxes authorized by this Act shall be reduced by the total amount of any Federal investment credit or other Federal tax credit actually received by the certificate holder applicable to the facility.

E. Applicants and certificate holders shall provide the Tax Commission with information showing the net commercial value of materials captured or recovered by a facility and shall make all pertinent books and records available for examination by the Commission for the purposes of determining the credit provided by this Act. (§ 6).

Nothing in this Act shall be deemed to affect the application excise tax credits prior to the effective date of this Act. (§ 7).

F. Revision or Certification by the Air Pollution Control Board

The State Air Pollution Control Board, after notice to the Commission and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

- (1) The certificate was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the Commission shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this Act or against which the credit provided for by this Act has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.
- (2) The facility covered by the certificate is no longer operated primarily for the purpose of the control, capture, and removal of pollutants from the air, or is no longer suitable or reasonably adequate to meet the intent and purposes of the air pollution control statutes in which case the certificate shall be modified or revoked. (§ 10).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

West Virginia 1/

I. POLICY STATEMENT

To achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this State and facilitate the enjoyment of the natural attractions of this State.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest. (§ 16-20-1).

II. DEFINITIONS

"Person" means any and all persons natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other State or country, and any firm, partnership or association of whatever nature.

"Air pollutants" means solids, liquids or gases which, if discharged into the air, will result in a statutory air pollution.

"Discharge" refers to any continuous or regular release, escape or emission of air pollutants into the air.

"Statutory air pollution" means the discharge into the air by the act of man or substances (liquid, solid, gaseous, organic, or inorganic) in a locality, manner and amount as to be unreasonably and materially injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property. (§ 16-20-2).

III. ADMINISTRATIVE ORGANIZATION

The Commission is established as an agency of the State and consists of seven members--the State Health Director and Commissioner of Agriculture ex officio, and five members appointed by the Governor, with the advice and consent of the Senate, for five-

1/ Citations refer to Article 20, Chapter 60, West Virginia Code, as amended and reenacted by Senate Bills No. 200 and No. 270, Approved March 17, 1967.

West Virginia -- Continued

year terms, two of whom shall be representative of industries engaged in business in the State. Ex officio members receive no salary but are to be reimbursed for actual and necessary expenses. Appointed members receive compensation for their services and are to be reimbursed for any reasonable and necessary expenses incurred in the discharge of their duties.

The chairman, elected from the members of the Commission, and a secretary, appointed by the Commission, serve for a fiscal year. The Commission is authorized to hire necessary personnel and fix their compensation, to establish rules for the conduct of its proceedings (§ 16-20-4).

IV. POWERS AND DUTIES

The Commission is authorized:

- (1) To develop ways and means to control air pollution.
- (2) To consult and cooperate with public and private agencies and groups, and to encourage voluntary cooperative action to preserve air purity.
- (3) To encourage and conduct research and studies.
- (4) To adopt and promulgate reasonable regulations which may not specify the design of equipment, type of construction or particular method to be used to reduce the discharge of air pollutants.
- (5) To conduct enforcement activities, and enter orders requiring compliance with the statute and regulations.
- (6) To enter private or public property to investigate violations, but such investigation may not extend to secret processes or methods.
- (7) To give public notice of imminent and serious public health hazards resulting from a violation of the statute.
- (8) To accept and spend money from the Federal government and other sources and to represent the State in negotiating interstate air pollution control compact.
- (9) To appoint technical advisory councils for various areas of the State.

(10) To establish procedural rules.

(11) To appoint a Director. (§ 16-20-5).

V. PROCEDURE

A. Cease and Desist Orders

If, from any investigation made by him or from any complaint filed with him, the Director believes: That there is a violation of the law, he shall make a cease and desist order fixing a reasonable time in such order by which such activity must stop or be prevented. The order shall contain the findings of fact upon which the Director determined to make and enter such order.

The director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law enforcement officer.

Any person upon whom a copy of such final order has been served may appeal such order to the air pollution control commission by filing a notice of appeal, on the form prescribed by the commission for such purpose, with the commission within fifteen days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained of and the grounds upon which the appeal is based. The filing of such notice of appeal stays the effect of the order complained of until a final determination is made by the commission.

The Director shall prepare and certify to the commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the Director's file relating to the matter in question. The commission shall hear the appeal *de novo*, and evidence may be offered on behalf of the Director and the alleged violator. Any such appeal hearing shall be held in the county wherein the alleged statutory air pollution complained of originated. (§ 16-20-6).

B. Appeal Hearings

Appeal hearings shall be conducted by a quorum of the Commission.

- (1) The Secretary of the Commission or any Commissioner is authorized to issue subpoenas and subpoenas duces tecum.
- (2) Hearings shall be held within twenty days after the Commission receives the timely notice of appeal, unless there is a postponement or continuance. The Commission may postpone or continue any hearing on its own motion, or upon application of the alleged violator or the Director for good cause shown. The Director shall be represented at any such hearing by the Attorney General or his assistants. At any such hearing the alleged violator may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this State.
- (3) After such hearing and consideration of all of the testimony, evidence and record in the case, the Commission shall make and enter an order affirming, modifying or vacating the order of the Director, or shall make and enter such order as the Director should have entered.
- (4) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and his attorney of record, if any, and upon the appellee in person or by registered or certified mail. The order of the Commission shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section seven of this article. (§ 16-20-6).

VI. EMERGENCIES

Whenever the Commission finds that air pollution conditions in any area create an emergency and require immediate action for the protection of the public health, it may, with the approval of the Governor, issue an order to reduce or prevent emissions contributing to such conditions and giving notice of a hearing to be held within 24 hours. Upon the evidence at the hearing, the Commission within 24 hours thereafter shall affirm, modify or set aside the order. (§ 16-20-10).

VII. JUDICIAL REVIEW

Any person substantially affected by a Commission order may within 30 days from the service of the order file a written notice of appeal from such order with the Commission. The Commission shall forward to the appellant within 30 days of the filing a copy of the full transcript of the proceedings, and of all orders, etc., therein and shall also file such documents with the Clerk of the circuit court of the county where the alleged pollution originated. The court is directed to hear the appeal without a jury upon the basis of the transcript and such additional evidence as may be presented by the Commission or any affected person. The court may affirm, modify or set the order aside in whole or in part, and shall fix a reasonable period to correct pollution found to exist. An appeal may be taken from the circuit court order to the Supreme Court of Appeals by any party affected by the order.

An appeal stays the order appealed from pending final determination of the case. (§ 16-20-7).

VIII. PENALTIES AND INJUNCTIVE RELIEF

- A. A violation of a Commission order is punishable by a penalty of not more than \$1,000 a day for each day the violation continues. Suit to enforce the penalty may be brought in a circuit court of the county where the person resides or is engaged in the activity complained of. The amount of the penalty is fixed by the court without a jury. (§ 16-20-8).

West Virginia -- Continued

- B. In the absence of reasonable progress toward correction, the Commission may seek an injunction in the appropriate circuit court to restrain violations of a final order. (§ 16-20-9).

IX. MISCELLANEOUS

A. Other Air Pollution Control Authorities Repealed

All other statutes or parts of statutes applicable to air pollution control or inconsistent with this Act, including statutes relating to State and local health boards and political subdivisions, are repealed except that municipal air pollution control ordinances adopted prior to the enactment of the statute are continued in effect. (§ 16-20-11).

B. Effective Date

- (1) Rules and regulations become effective one year after effective date of statute. (§ 16-20-13).
- (2) Statute originally became effective in 1961, and was amended in 1967.

2. Special Tax Adjustments for Expenditures for
Air Pollution Control Facilities 1/

If the taxpayer so elects there shall be:

- (1) Subtracted from Federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this State of air pollution control facilities, and
- (2) Added to Federal taxable income the total of the amounts of any allowances for depreciation and amortization of such air pollution control facilities, to the extent deductible in determining Federal taxable income.

The election shall be made in the return filed for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope and application of such election shall be defined, as the Tax Commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular air pollution control facility.

If the taxpayer's Federal taxable income is subject to allocation and apportionment, the adjustments prescribed shall (instead of being made to the taxpayer's Federal taxable income before allocation and apportionment thereof) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this State. (§ 11-24-6),

1/ Citations refer to Chapter 11, Article 24, West Virginia Code, as enacted by Senate Bill No. 209, Approved March 21, 1967.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Wisconsin 1/

I. PURPOSE

To grant the necessary powers to organize a comprehensive program to enhance the quality, management and protection of the State's air and land resources. Recognizing the need for a coordinated effort to prevent and abate all kinds of environmental pollution, it is intended to vest authority for the state-wide control of air pollution and solid waste disposal in the Department of Resource Development, which agency has general supervision and control over State waters. (§ 1(4)).

II. DEFINITIONS

- (1) "Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.
- (2) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.
- (3) "Emission" means a release of air contaminants into the atmosphere.
- (4) "Environmental pollution" means the contaminating or rendering unclean or impure the air, land or waters of the State, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life. (§ 16(144.30 amendment)).

1/ Citations refer to Chapter 83, Laws 1967.

III. POWERS AND DUTIES

A. The Department of Resources Development shall:

- (1) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution. The Department thereafter shall be responsible for the revision and implementation of such plans.
- (2) Conduct or direct studies, investigations and research relating to air contamination and pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and pollution throughout the State.
- (3) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall relieve any person from compliance with § 144.30 to 144.46 or rules pursuant thereto, or any other provision of law. (§ 144.36).
- (4) Promulgate rules to implement the law.
- (5) Encourage voluntary cooperation by persons and affected groups.
- (6) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance therefor.
- (7) Collect and disseminate information and conduct educational and training programs.
- (8) Organize a comprehensive and integrated program to enhance the quality, management and protection of the State's air resources. (§ 144.31).

B. The Department of Resources Development may:

- (1) Examine any records relating to emissions which cause or contribute to air contamination. (§ 144.36).
- (2) Hold hearings relating to any aspect of the administration of the Act and, in connection therewith, compel the attendance of witnesses and the production of evidence.
- (3) Issue orders to effectuate the purposes of the Act and enforce the same by all appropriate administrative and judicial proceedings.
- (4) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.
- (5) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.
- (6) Advise, consult, contract and cooperate with other agencies of the State, local governments, industries, other States, interstate or interlocal agencies, and the Federal government, and with interested parties. (§ 144.31).

IV. CONFIDENTIALITY OF RECORDS

Any records or other information furnished to or obtained by the Department which are certified by the owner or operator as relating to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the Department unless such owner or operator expressly agrees to publication or availability to the general public. The Department may use such records or information in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential. (§ 144.33).

V. INSPECTIONS

Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premise or place on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the State of compliance with the statute and rules in force pursuant thereto. (§ 144.34).

VI. CLASSIFICATION AND REPORTING

The Department, by rule, shall classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class. Classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the Department require reporting shall make reports containing such information as required concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. (§ 144.38).

VII. NOTICE REQUIRED FOR CONSTRUCTION

The Department shall require that notice be given it prior to the construction, installation or establishment of particular types or classes of air contaminant sources specified in its rules. The Department shall require, as a condition precedent to the establishment of the air contaminant source covered thereby, the submission of information as it deems necessary in order to determine whether the proposed establishment will be in accordance with its rules. If within 30 days after the receipt of the information the Department determines that the proposed installation will not be in accordance with requirements it shall issue an order prohibiting the establishment of the air contaminant source. If the Department does not issue such order within such 30 day period the establishment may proceed in accordance with the plans, specifications or other information, if any, required to be submitted.

In lieu of State viewing of plans and specifications, the Department may authorize counties which are administering approved air pollution control programs to review and approve plans and specifications of air contaminant sources being constructed within the jurisdiction of said counties.

In addition to any other remedies available on account of the issuance of an order prohibiting construction, installation or establishment of such source, and prior to invoking any such remedies, any person aggrieved thereby shall, upon request in accordance with rules of the Department, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

Any addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as establishment of a new air contaminant source.

Any features, machines and devices constituting parts of or called for by plans, specifications or the information shall be maintained in good working order. (§ 144.39).

VIII. EMERGENCY PROCEDURE

If the Director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the Director shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the Department. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the Resource Development Board shall affirm, modify or set aside the order of the Director.

In the absence of a generalized condition of air pollution of the type referred to above, if the Director finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, he may order the persons responsible for the operations in question to reduce or discontinue emissions immediately. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth above shall apply. (§ 144.40).

IX. AIR POLLUTION CONTROL ADVISORY COUNCIL

An Air Pollution Control Advisory Council is to be appointed by the Governor composed of 7 members serving for 3 year terms.

Members shall receive no compensation for their services, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

The Council shall advise the Resource Development Board on proposed and existing rules and any matters pertaining to air pollution. (§ 144.37).

X. HEARINGS

The Department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the Department. The Department may order the complainants to file security for costs in a sum deemed to be adequate. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter. The respondent shall file his verified answer to the complaint with the Department and serve a copy on the person so designated by the complainants. For purposes of any hearing under this chapter, the Director may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the Department shall make and file its findings of fact, conclusions of law and order, which shall be subject to judicial review. If the Department determines that any complaint has been filed maliciously or in bad faith it shall so find, and the person complained against shall be entitled to recover his expenses on the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution. (§ 144.537).

XI. STATE AID

The Department may develop a program for the training of technical personnel to facilitate the administration of county air pollution control programs. Annual grants-in-aid may be made by the Department to any county or group of counties for the training of employees or potential employees in air pollution detection and control. The qualifications and criteria for participation in this program shall be established by the Department.

The Department may enter into agreements with any county to provide in-service training programs and facilities. In accordance with criteria established by the Department, annual grants-in-aid may be made by the Department to any county establishing an approved in-service training program for the costs of developing and maintaining such program. (§ 144.415).

2. Local Option

LOCAL AIR POLLUTION CONTROL PROGRAMS.

After consultation with incorporated units of local government, any county may establish and thereafter administer within its jurisdiction, including incorporated areas, an air pollution control program which:

- A. Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by the Act and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;
- B. Provides for the county-wide enforcement of such requirements by appropriate administrative and judicial process;
- C. Provides for administrative organization, staff and financial and other resources necessary to effectively and efficiently carry out its program;
- D. May authorize municipalities to participate in the administration and enforcement of air pollution programs; and
- E. Is approved by the Department of Resource Development as adequate.

Any county may consult with regional planning commissions and may administer all or part of its air pollution control program in cooperation with one or more other counties or municipalities. Performance by or on behalf of a county pursuant to such cooperative undertaking shall be considered to be performance by the county for purposes of this section.

If the Department finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Resource Development Board may determine the boundaries within which such program is necessary and require it.

If the Department has reason to believe that the absence of an air pollution control program or a program in force is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of the Act, the Department shall, on due notice, conduct a hearing on the matter.

If, after hearing, the Department determines that a program is required or is inadequate to prevent and control air pollution in the county to which such program relates, or that such program is not accomplishing the purposes of the Act, it shall require that necessary corrective measures be taken within 60 days.

If the county fails to take such necessary corrective action within the time required, the Department shall administer within such county all of the regulatory provisions of the Act. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction. The cost of such administration shall be a charge on the county.

Any county in which the Department administers its air pollution control program may, with the approval of the Department, establish or resume a county air pollution control program. (§ 144.41).

Subdivisions of this State and interlocal agencies may apply for Federal aid for the control of air pollution or the development and administration of programs related to air pollution control. (§ 144.32).

Subsection 59.07(53) of the Wisconsin Statutes Annotated acquired its present form by Chapter 340, Laws of 1957, which added a provision on control of radioactive dusts. This subsection authorizes county boards in counties having a population of 500,000 or more (Milwaukee County is the only county having over 200,000 inhabitants) to:

- (1) Regulate by ordinance the emission, within their territorial jurisdiction, of smoke, liquids, gases, solids, etc., including radioactive material, from any source;
- (2) Prescribe the maximum volatile matter content or other constituents of fuels used within the county;
- (3) Prescribe fees for examination of plans, inspections, tests, issuance of permits and certificates of operation;

- (4) Prescribe rules and standards in aid of its regulations;
- (5) Provide for an appeal board and an advisory board and their powers;
- (6) Prescribe penalties for violation of the ordinances;
- (7) Provide for suits to enjoin violations of the ordinances; and
- (8) Provide for a county department of air pollution regulations.

Ordinances enacted pursuant to this subsection supercede and nullify all municipal ordinances then in effect as to all matters included within the county ordinance. While a county ordinance is effective, such municipalities may enact no ordinances as to the subject matter included within such county ordinances. Matters treated in this subsection are declared to be of State-wide concern.

NOTE:

In Red Owl Stores, Inc. vs. Milwaukee County and John E. Brown (No. 294-839), the Circuit Court of Milwaukee County by its decision dated June 28, 1961, held that subsection 59.07 (53) of the Wisconsin statutes violated the State constitutional requirement of uniform county government because it limited the authorities there described relating to air pollution control to counties having a population of 500,000 or more. It also held invalid the Milwaukee ordinance enacted pursuant to the authority of subsection 59.07 (53).

In order to restore to Milwaukee county its right to control air pollution, the Legislature passed Chapter 508, Laws of 1961, adding subsection 59.07 (85), which extends to all county boards the authority to control and abate air pollution. This action presumably revalidated 59.07 (53) and the Milwaukee County ordinance.

With the exception of minor differences in wording, 59.07 (85) is identical with 59.07 (53) in all but two respects: County ordinances adopted pursuant to 59.07 (85) do not supercede municipal ordinances, if they are at least equally restrictive, and no reference is made in 59.07 (85) to any "State-wide concern."

3. Motor Vehicle Pollution

The Department of Resource Development may promulgate rules for the control of motor vehicle emissions, as to the installation and use of abatement equipment and the maintenance of vehicles and equipment.

The Department shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to Federal law.

Except as permitted by law, no person on penalty of cancellation of the vehicle registration shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle and required by rules of the Department to be maintained in or on the vehicle. (§ 144.42).

4. Tax Benefits for Air Pollution Abatement Equipment

All property purchased, constructed, installed and operated with the approval of the Committee on Water Pollution, State Board of Health, a city council, a village board or county board pursuant to 59.07 (53) or (85) for the purpose of abating or eliminating pollution of the air, and all property purchased, constructed, installed and operated with the approval of the Department of Resource Development for the purposes of abating or eliminating pollution of the air of the State shall be exempt from general property taxes. (§ 70.11(21)(a)).

In addition, in lieu of depreciation, the owner may elect an accelerated amortization deduction for such property computed on an estimated life of 60 months (§§ 71.04(2b), 71.05(2b)).

Procedures for claiming and establishing these benefits are set forth in the statute.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Wyoming 1/

I. POLICY STATEMENT

Declares the policy of the State to maintain a reasonable degree of purity of the air resources, which will promote the public health and welfare and enjoyment thereof, the economic development of the State, the propagation and protection of flora and fauna, and the protection of property and other resources, and to that end by rules, regulations, and standards based on scientific knowledge, require the use of available practical and reasonable methods to prevent and control air pollution. (§ 2).

II. DEFINITIONS

"Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, or any combination thereof, but not to include steam or water vapor.

"Air pollution" means the presence in the outdoor atmosphere of one or more contaminants in such quantities and duration as is materially injurious to human health or welfare, animal or plant life, or property, or unreasonably interferes with the enjoyment of life or property.

"Emission" means a release into the outdoor atmosphere of air contaminants.

"Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the State, trust, estate, or any other legal entity. (§ 3).

III. ADMINISTRATIVE ORGANIZATION

Creates in the Department of Public Health an Air Resources Council, consisting of nine members as follows: a representative of the Department of Public Health, the Commissioner of Agriculture, the Chairman of the Land and Water Conservation Commission, and six members to be appointed by the Governor, representative of municipal government, industry, and the public at large. (§ 4).

1/ Citations refer to Chapter 186, Laws 1967.

IV. POWERS AND DUTIES

A. Air Resources Council

- (1) To manage its internal affairs and prescribe rules of practice and procedure;
- (2) To develop and formulate, with the advice and assistance of the Division of Administration, a comprehensive program for the prevention, control and abatement of air pollution and, from time to time, review and modify such program as necessary;
- (3) To devise, formulate, adopt, amend and repeal rules, regulations and standards, and methods of procedure for preventing or reducing air pollution, but not to exceed Federal standards;
- (4) To consider and grant variances from standards, rules and regulations promulgated under this act; and
- (5) To hold hearings as provided in the Administrative Procedure Act in connection with the promulgation of rules, regulations and standards and amendments, modifications and repeals thereof and the granting and denying of variances therefrom, and in connection therewith, compel attendance of witnesses and production of evidence. (§ 5).

B. Division of Administration

The Division of Administration shall enforce and administer this Act and the rules, regulations, standards and orders promulgated and issued thereunder under the direction of the Council, and shall have, subject to the Council's direction and control, the following powers:

- (1) to suggest to the Council for its consideration proposed rules, regulations and standards;
- (2) to advise and assist the Council in connection with the development of a comprehensive plan and program for the prevention, control and abatement of air pollution;

- (3) to conduct and supervise and contract for studies, investigations and research relating to air contamination and pollution and their causes, effect, prevention, abatement and control. To this end, the Division may require access to records relating to emissions which cause or contribute to contamination;
- (4) to conduct investigations as directed by the Council;
- (5) to conduct and supervise statewide programs for air pollution education;
- (6) to advise, consult and cooperate with agencies of the United States and political subdivisions and industries and other effective groups;
- (7) to accept and receive and administer grants or other funds or gifts from public or private agencies, including the Federal government, for the purpose of carrying out this act;
- (8) to determine by means of studies and sampling the degree of contamination and pollution in the State;
- (9) such further powers as shall be reasonably necessary and incidental to the proper performance of the duties imposed upon the Division by this Act. (§ 6).

V. INSPECTIONS

Authorizes any duly authorized officer, employee, or representative of the Division to enter and inspect any property, premise or place on or at which an air contaminant source is located or is being constructed or installed for the purposes of investigating actual sources of pollution and for ascertaining compliance or noncompliance with this act or rules, regulations or orders promulgated hereunder. (§ 7).

VI. STANDARDS

Authorizes the Council to establish ambient air standards and/or emission control requirements by rule or regulations, as may be necessary to prevent, abate, or control air pollution, (§ 8).

VII. VIOLATIONS

If the Division shall have cause to believe that any person is violating any provision of this Act or rule, regulation or standard pursuant thereto, or an alleged violation is complained of, the Division shall cause a prompt investigation to be made, and after such investigation if the Division finds that a violation exists it shall, by conference, conciliation and persuasion, endeavor to eliminate the source or cause of the pollution or contamination. In case of failure by conference, conciliation or persuasion to correct or remedy the violation, the Division shall cause to be issued and served upon the alleged violator a written notice and may require the violator to cease and desist from such violation within reasonable time. If, after a hearing, the Council finds that a violation or violations have occurred, it shall affirm or modify such order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective action as may be appropriate. The Council shall have power and the duty to compel the attendance of witnesses and the production of evidence at hearings, and to delegate its hearing powers to a referee except that final determinations shall be made by the Council. (§ 9).

VIII. EMERGENCY PROCEDURE

The Director may order the immediate abatement of emissions during a generalized emergency or if the emissions are from one or more contaminant sources causing imminent danger to human health or safety. A Council hearing on such a summary order is to be available within 24 hours of the order. (§ 10).

IX. VARIANCES

Upon application to the Council, variances may be granted after public hearing on due notice. Any variance or renewal thereof shall be granted for time periods and under conditions consistent with the reasons therefore.

Wyoming -- Continued

- A. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall continue in effect only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Council may prescribe.
- B. If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Council is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.
- C. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in items (A) and (B) of this subsection (C), it shall be for not more than one year.
- D. Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Council on account of the variance, no renewal thereof shall be granted, without public hearings held on due notice. No renewal shall be granted unless applied for. Immediately upon receipt of an application for renewal, the council shall give public notice of such application in accordance with rules and regulations of the Council.
- E. Any person adversely affected by a variance or renewal granted by the council may obtain judicial review thereof in the manner prescribed by the Wyoming Administrative Procedures Act. (§ 11).

X. CONFIDENTIAL RECORDS

If an owner or operator certifies that records or other information obtained by the Division or Council relate to production or sales figures or to unique processes or production or which would tend to adversely affect his competitive position, such records or information are to be only used in a confidential manner by the Division or by the Council. The information may be used in anonymous aggregate publications. (§ 13).

XI. PENALTIES

In addition to being enjoined, any person who violates any provision of this Act, or any rule, regulation or order promulgated hereunder shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined not more than \$750.00. Each calendar week or portion thereof during which such violation continues shall be deemed to be a separate offense. (§ 14(a)).

2. Local Programs 1/

Cities and towns have the power to declare, and abate nuisances and impose penalties on offenders. (§ 15.1-3(17)).

1/ Citations in this Digest refer to Wyoming Statutes 1957.

3. Tax Exemptions

Exempts from taxation, subject to approval of the Tax Commission, facilities, installations, machinery or equipment designed, installed and utilized in the elimination, control or prevention of air pollution. (§ 15).

A P P E N D I X



Public Law 90-148
90th Congress, S. 780
November 21, 1967

An Act

81 STAT. 485

To amend the Clean Air Act to authorize planning grants to air pollution control agencies; expand research provisions relating to fuels and vehicles; provide for interstate air pollution control agencies or commissions; authorize the establishment of air quality standards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Air Quality Act of 1967".

SEC. 2. The Clean Air Act, as amended (42 U.S.C. 1857-1857I), is hereby amended to read as follows:

Air Quality Act
of 1967.

77 Stat. 392;
79 Stat. 992.

"TITLE I—AIR POLLUTION PREVENTION AND CONTROL

"FINDINGS AND PURPOSES

"SEC. 101. (a) The Congress finds—

"(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

"(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

"(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

"(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

"(b) The purposes of this title are—

"(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

"(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

"(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

"(4) to encourage and assist the development and operation of regional air pollution control programs.

"COOPERATIVE ACTIVITIES AND UNIFORM LAWS

"SEC. 102. (a) The Secretary shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

"(b) The Secretary shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure

the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

"(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

"RESEARCH, INVESTIGATIONS, TRAINING, AND OTHER ACTIVITIES

"SEC. 103. (a) The Secretary shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

"(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

"(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

"(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

"(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.

"(b) In carrying out the provisions of the preceding subsection the Secretary is authorized to—

"(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

"(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

"(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a) (1) of this section;

"(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to sections

3648 and 3709 of the Revised Statutes (81 U.S.C. 529; 41 U.S.C. 5);

"(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

"(6) establish and maintain research fellowships, in the Department of Health, Education, and Welfare and at public or non-profit private educational institutions or research organizations;

"(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

"(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

"(c) In carrying out the provisions of subsection (a) of this section the Secretary shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollution agents (or combinations of agents).

"(d) The Secretary is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this Act.

"(e) If, in the judgment of the Secretary, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Secretary. If the Secretary finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 108(a), he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (d), (e), and (f) of section 108.

"RESEARCH RELATING TO FUELS AND VEHICLES

"SEC. 104. (a) The Secretary shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

"(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for control of com-

bustion by products of fuels, for removal of potential pollutants from fuels, and for control of emissions from evaporation of fuels;

"(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; and (B) carrying out the other provisions of this section, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5): *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, United States Code, except that the determination, approval, and certification required thereby shall be made by the Secretary: *Provided further*, That no grant may be made under this paragraph in excess of \$1,500,000;

70A Stat. 134.

Limitation.

"(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

"(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this Act;

"(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

"(b) In carrying out the provisions of this section, the Secretary may—

"(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

"(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

"(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

"(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

"(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the Act will be served thereby.

Appropriation.

"(c) For the purposes of this section there are authorized to be appropriated for the fiscal year ending June 30, 1968, \$35,000,000, and for the fiscal year ending June 30, 1969, \$90,000,000. Amounts appropriated pursuant to this subsection shall remain available until expended.

"GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL
PROGRAMS

"Sec. 105. (a) (1) The Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and grants to such agencies in an amount up to one-half of the cost of maintaining, programs for the prevention and control of air pollution and programs for the implementation of air quality standards authorized by this Act: *Provided*, That the Secretary is authorized to make grants to air pollution control agencies within the meaning of sections 302(b) (2) and 302(b) (4) in an amount up to three-fourths of the cost of planning, developing, establishing, or improving and up to three-fifths of the cost of maintaining, regional air quality control programs. As used in this subsection the term 'regional air quality control program' means a program for the prevention and control of air pollution or the implementation of air quality standards programs as authorized by this Act, in an area that includes the areas of two or more municipalities whether in the same or different States.

"Regional air
quality con-
trol program."

"(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4), the Secretary shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

"(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4), the Secretary shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

"(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Secretary shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Secretary may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Secretary shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Secretary is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Secretary has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

Limitation.

"(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Secretary shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

"INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

"SEC. 106. (a) For the purpose of expediting the establishment of air quality standards in an interstate air quality control region designated pursuant to section 107(a) (2), the Secretary is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors standards of air quality and plans for implementation thereof and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Secretary is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.

"(b) (1) Whenever the Secretary deems it necessary to expedite the establishment of standards for an interstate air quality control region designated pursuant to section 107(a) (2) he may, after consultation with the Governors of the affected States, designate or establish an air quality planning commission for the purpose of developing recommended regulations setting forth standards of air quality to be applicable to such air quality control region.

"(2) Such Commission shall consist of the Secretary or his designee who shall serve as Chairman, and adequate representation of appropriate State, interstate, local and (when appropriate), international, interests in the designated air quality control region.

"(3) The Secretary shall, within available funds, provide such staff for such Commission as may be necessary to enable it to carry out its functions effectively, and shall pay the other expenses of the Commission; and may also accept for the use by such Commission, funds, property, or services contributed by the State involved or political subdivisions thereof.

Compensation,
travel expenses.

80 Stat. 416.

"(4) Each appointee from a State, other than an official or employee thereof, or of any political subdivision thereof, shall, while engaged in the work of the Commission, receive compensation at a rate fixed by the Secretary, but not in excess of \$100 per diem, including traveltime, and while away from his home or regular place of business, he may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 3109) for persons in the Government service employed intermittently.

"AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

"SEC. 107. (a) (1) The Secretary shall, as soon as practicable, but not later than one year after the date of enactment of the Air Quality Act of 1967, define for the purposes of this Act, atmospheric areas of the Nation on the basis of those conditions, including, but not limited to, climate, meteorology, and topography, which affect the interchange and diffusion of pollutants in the atmosphere.

"(2) For the purpose of establishing ambient air quality standards pursuant to section 108, and for administrative and other purposes, the Secretary, after consultation with appropriate State and local authorities shall, to the extent feasible, within 18 months after the date of

enactment of the Air Quality Act of 1967 designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors including atmospheric areas necessary to provide adequate implementation of air quality standards. The Secretary may from time to time thereafter, as he determines necessary to protect the public health and welfare and after consultation with appropriate State and local authorities, revise the designation of such regions and designate additional air quality control regions. The Secretary shall immediately notify the Governor or Governors of the affected State or States of such designation.

"(b) (1) The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, from time to time, but as soon as practicable, develop and issue to the States such criteria of air quality as in his judgment may be requisite for the protection of the public health and welfare: *Provided*, That any criteria issued prior to enactment of this section shall be reevaluated in accordance with the consultation procedure and other provisions of this section and, if necessary, modified and reissued. Such issuance shall be announced in the Federal Register and copies shall be made available to the general public.

Publication in
Federal Register.

"(2) Such criteria shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

"(3) Such criteria shall include those variable factors which of themselves or in combination with other factors may alter the effects on public health and welfare of any subject agent or combination of agents, including, but not limited to, atmospheric conditions, and the types of air pollution agent or agents which, when present in the atmosphere, may interact with such subject agent or agents, to produce an adverse effect on public health and welfare.

"(c) The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on those recommended pollution control techniques the application of which is necessary to achieve levels of air quality set forth in criteria issued pursuant to subsection (b), including those criteria subject to the proviso in subsection (b) (1), which information shall include technical data relating to the technology and costs of emission control. Such recommendations shall include such data as are available on the latest available technology and economic feasibility of alternative methods of prevention and control of air contamination including cost-effectiveness analyses. Such issuance shall be announced in the Federal Register and copies shall be made available to the general public.

Publication in
Federal Register.

"(d) The Secretary shall, from time to time, revise and reissue material issued pursuant to subsections (b) and (c) in accordance with procedures established in such subsections.

"AIR QUALITY STANDARDS AND ABATEMENT OF AIR POLLUTION

"SEC. 108. (a) The pollution of the air in any State or States which endangers the health or welfare of any persons, shall be subject to abatement as provided in this section.

"(b) Consistent with the policy declaration of this title, municipal, State, and interstate action to abate air pollution shall be encouraged and shall not be displaced by Federal enforcement action except as otherwise provided by or pursuant to a court order under subsection (c), (h), or (k).

"(c) (1) If, after receiving any air quality criteria and recommended control techniques issued pursuant to section 107, the Governor of a State, within ninety days of such receipt, files a letter of intent that such State will within one hundred and eighty days, and from time to time thereafter, adopt, after public hearings, ambient air quality standards applicable to any designated air quality control region or portions thereof within such State and within one hundred and eighty days thereafter, and from time to time as may be necessary, adopts a plan for the implementation, maintenance, and enforcement of such standards of air quality adopted, and if such standards and plan are established in accordance with the letter of intent and if the Secretary determines that such State standards are consistent with the air quality criteria and recommended control techniques issued pursuant to section 107; that the plan is consistent with the purposes of the Act insofar as it assures achieving such standards of air quality within a reasonable time; and that a means of enforcement by State action, including authority comparable to that in subsection (k) of this section, is provided, such State standards and plan shall be the air quality standards applicable to such State. If the Secretary determines that any revised State standards and plan are consistent with the purposes of this Act and this subsection, such standards and plan shall be the air quality standards applicable to such State.

"(2) If a State does not (A) file a letter of intent or (B) establish air quality standards in accordance with paragraph (1) of this subsection with respect to any air quality control region or portion thereof and if the Secretary finds it necessary to achieve the purpose of this Act, or the Governor of any State affected by air quality standards established pursuant to this subsection petitions for a revision in such standards, the Secretary may after reasonable notice and a conference of representatives of appropriate Federal departments and agencies, interstate agencies, States, municipalities, and industries involved, prepare regulations setting forth standards of air quality consistent with the air quality criteria and recommended control techniques issued pursuant to section 107 to be applicable to such air quality control region or portions thereof. If, within six months from the date the Secretary publishes such regulations, the State has not adopted air quality standards found by the Secretary to be consistent with the purposes of this Act, or a petition for public hearing has not been filed under paragraph (3) of this subsection, the Secretary shall promulgate such standards.

Hearings; board
members.

"(3) If at any time prior to thirty days after standards have been promulgated under paragraph (2) of this subsection, the Governor of any State affected by such standards petitions the Secretary for a hearing, the Secretary shall call a public hearing for the purpose of receiving testimony from State and local pollution control agencies and other interested parties affected by the proposed standards, to be held in or near one or more of the places where the air quality standards will take effect, before a hearing board of five or more persons appointed by the Secretary. Each State which would be affected by such standards shall be given an opportunity to select a member of the hearing board. Each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select one member of the hearing board and not less than a majority of the hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. The members of the board who are not officers or employees of the United States, while participating in the hearing conducted by such hearing board or otherwise engaged in the work of such hearing board, shall be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem,

Compensation,
travel expenses.

including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, of the United States Code for persons in the Government service employed intermittently. At least thirty days prior to the date of such hearing notice of such hearing shall be published in the Federal Register and given to parties notified of the conference required in paragraph (2) of this subsection. On the basis of the evidence presented at such hearing, the hearing board shall within ninety days unless the Secretary determines a longer period is necessary, but in no event longer than one hundred and eighty days, make findings as to whether the standards published or promulgated by the Secretary should be approved or modified and transmit its findings to the Secretary. If the hearing board approves the standards as published or promulgated by the Secretary, the standards shall take effect on receipt by the Secretary of the hearing board's recommendations. If the hearing board recommends modifications in the standards as published or promulgated by the Secretary, the Secretary shall promulgate revised regulations setting forth standards of air quality in accordance with the hearing board's recommendations which will become effective immediately upon promulgation.

80 Stat. 499.
Publication in
Federal Register.

"(4) Whenever, on the basis of surveys, studies and reports, the Secretary finds that the ambient air quality of any air quality control region or portion thereof is below the air quality standards established under this subsection, and he finds that such lowered air quality results from the failure of a State to take reasonable action to enforce such standards, the Secretary shall notify the affected State or States, persons contributing to the alleged violation, and other interested parties of the violation of such standards. If such failure does not cease within one hundred and eighty days from the date of the Secretary's notification, the Secretary—

Violations;
jurisdiction.

"(i) in the case of pollution of air which is endangering the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

"(ii) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law, or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

In any suit brought under the provisions of this subsection the court shall receive in evidence a transcript of the proceedings of the hearing provided for in this subsection, together with the recommendations of the hearing board and the recommendations and standards promulgated by the Secretary, and such additional evidence, including that relating to the alleged violation of the standards, as it deems necessary to complete review of the standards and to determination of all other issues relating to the alleged violation. The court, giving due consideration to the practicability and to the technological and economic feasibility of complying with such standards, shall have jurisdiction to enter such judgment and orders enforcing such judgment as the public interest and the equities of the case may require.

"(5) In connection with any hearings under this section no witness or any other person shall be required to divulge trade secrets or secret processes.

"(6) Nothing in this subsection shall prevent the application of this section to any case to which subsection (a) of this section would be otherwise applicable.

Conference.

"(d) (1) (A) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

"(B) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the judgment of the Secretary, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

"(C) The Secretary may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Secretary shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

Foreign coun-
tries, partici-
pation.

"(D) Whenever the Secretary, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Secretary of Health, Education, and Welfare shall give formal notification thereof to the air pollution control

agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Secretary shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subparagraph shall apply only to a foreign country which the Secretary determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this subparagraph.

"(2) The agencies called to attend such conference may bring such persons as they desire to the conference. The Secretary shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal report with respect to the matters before the conference, including data and conclusions or findings (if any); and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Secretary shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

Transcript of
proceedings.

"(3) Following this conference, the Secretary shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this Act; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

"(e) If the Secretary believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Secretary shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

"(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Secretary is reasonably calculated to secure abatement of such pollution has not been taken, the Secretary shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Secretary. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less

Hearings;
board members.

than a majority of such hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

"(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Secretary concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

"(3) The Secretary shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

"(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Secretary—

"(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subparagraph (D) of subsection (d) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

"(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

Jurisdiction.

"(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

Compensation,
travel expenses.

"(i) Members of any hearing board appointed pursuant to subsection (f) who are not regular full-time officers or employees of the

United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

80 Stat. 499.
5 USC 5703.

"(j) (1) In connection with any conference called under this section, the Secretary is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Secretary such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Secretary shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Secretary may prescribe, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted by the Secretary. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code.

62 Stat. 791.

"(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Secretary for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Secretary may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

"(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

"(k) Notwithstanding any other provision of this section, the Secretary, upon receipt of evidence that a particular pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and finding that appropriate State or local authorities have not acted to abate such sources, may request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to immediately enjoin any contributor to the alleged pollution to stop the emission of contaminants causing such pollution or to take such other action as may be necessary.

"STANDARDS TO ACHIEVE HIGHER LEVEL OF AIR QUALITY"

"SEC. 109. Nothing in this title shall prevent a State, political subdivision, intermunicipal or interstate agency from adopting standards and plans to implement an air quality program which will achieve a higher level of ambient air quality than approved by the Secretary.

PRESIDENT'S AIR QUALITY ADVISORY BOARD AND ADVISORY COMMITTEES

Membership.

"SEC. 110. (a) (1) There is hereby established in the Department of Health, Education, and Welfare an Air Quality Advisory Board, composed of the Secretary or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

Term of office.

"(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall be eligible for reappointment within one year after the end of his preceding term, unless such term was for less than three years.

"(b) The Board shall advise and consult with the Secretary on matters of policy relating to the activities and functions of the Secretary under this Act and make such recommendations as it deems necessary to the President.

"(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Department of Health, Education, and Welfare.

"(d) In order to obtain assistance in the development and implementation of the purposes of this Act including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Secretary shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

Compensation,
travel expenses.

"(e) The members of the Board and other advisory committees appointed pursuant to this Act who are not officers or employees of the United States while attending conferences or meetings of the Board or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

"COOPERATION BY FEDERAL AGENCIES TO CONTROL AIR POLLUTION FROM
FEDERAL FACILITIES

"SEC. 111. (a) It is hereby declared to be the intent of Congress that any Federal department or agency having jurisdiction over any building, installation, or other property shall, to the extent practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling the pollution of the air in any area insofar as the discharge of any matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area.

"(b) In order to control air pollution which may endanger the health or welfare of any persons, the Secretary may establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any building, installation, or other property shall, before discharging any matter into the air of the United States, obtain a permit from the Secretary for such discharge, such permits to be issued for a specified period of time to be determined by the Secretary and subject to revocation if the Secretary finds pollution is endangering the health and welfare of any persons. In connection with the issuance of such permits, there shall be submitted to the Secretary such plans, specifications, and other information as he deems relevant thereto and under such conditions as he may prescribe. The Secretary shall report each January to the Congress the status of such permits and compliance therewith. Report to Congress.

"TITLE II—NATIONAL EMISSION STANDARDS ACT

"SHORT TITLE

"SEC. 201. This title may be cited as the 'National Emission Standards Act'.

"ESTABLISHMENT OF STANDARDS

"SEC. 202. (a) The Secretary shall by regulation, giving appropriate consideration to technological feasibility and economic costs, prescribe as soon as practicable standards, applicable to the emission of any kind of substance, from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons, and such standards shall apply to such vehicles or engines whether they are designed as complete systems or incorporate other devices to prevent or control such pollution.

"(b) Any regulations initially prescribed under this section, and amendments thereto, with respect to any class of new motor vehicles or new motor vehicle engines shall become effective on the effective date specified in the order promulgating such regulations which date shall be determined by the Secretary after consideration of the period reasonably necessary for industry compliance.

Effective date
of regulations.

"PROHIBITED ACTS

"SEC. 203. (a) The following acts and the causing thereof are prohibited—

"(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the manufacture for sale, the sale, or the offering for sale, or the introduction or delivery for introduction into commerce, or the importation into the United States for sale or resale, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this title which are applicable to such vehicle or engine unless it is in conformity with regulations prescribed under this title (except as provided in subsection (b));

"(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 207; or

"(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser.

"(b) (1) The Secretary may exempt any new motor vehicle or new motor vehicle engine, or class thereof, from subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

Exemptions.

"(2) A new motor vehicle or new motor vehicle engine offered for importation by a manufacturer in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Secretary of Health, Education, and Welfare may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon

such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this title. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Secretary of Health, Education, and Welfare under this title.

"(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall not be subject to the provisions of subsection (a).

"INJUNCTION PROCEEDINGS

"SEC. 204. (a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), or (3) of section 203(a).

"(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

"PENALTIES

"SEC. 205. Any person who violates paragraph (1), (2), or (3) of section 203(a) shall be subject to a fine of not more than \$1,000. Such violation with respect to sections 203(a) (1) and 203(a) (3) shall constitute a separate offense with respect to each new motor vehicle or new motor vehicle engine.

"CERTIFICATION

"SEC. 206. (a) Upon application of the manufacturer, the Secretary shall test, or require to be tested, in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by such manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 202 of this title. If such vehicle or engine conforms to such regulations the Secretary shall issue a certificate of conformity, upon such terms, and for such period not less than one year, as he may prescribe.

"(b) Any new motor vehicle or any motor vehicle engine sold by such manufacturer which is in all material respects substantially the same construction as the test vehicle or engine for which a certificate has been issued under subsection (a), shall for the purposes of this Act be deemed to be in conformity with the regulations issued under section 202 of this title.

"RECORDS AND REPORTS

"SEC. 207. (a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and regulations thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee at reasonable times to have access to and copy such records.

"(b) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (a), which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress. 62 Stat. 791.

"STATE STANDARDS

"SEC. 208. (a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this title. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

"(b) The Secretary shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this title.

"(c) Nothing in this title shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

"FEDERAL ASSISTANCE IN DEVELOPING VEHICLE INSPECTION PROGRAMS

"SEC. 209. The Secretary is authorized to make grants to appropriate State air pollution control agencies in an amount up to two-thirds of the cost of developing meaningful uniform motor vehicle emission device inspection and emission testing programs except that (1) no grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program; and (2) no such grant shall be made unless the Secretary of Transportation has certified to the Secretary that such program is consistent with any highway safety program developed pursuant to section 402 of title 23 of the United States Code. 80 Stat. 731.

"REGISTRATION OF FUEL ADDITIVES

"SEC. 210. (a) The Secretary may by regulation designate any fuel or fuels (including fuels used for purposes other than motor vehicles), and after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel may deliver any such fuel for introduction into interstate commerce or to another person who, it can reasonably be expected, will deliver such fuel for such introduction unless the manufacturer of such fuel has provided the Secretary with the information required under subsection (b)(1) of this section and unless any additive contained in such fuel has been registered with the Secretary in accordance with subsection (b)(2) of this section.

"(b) For the purposes of this section the Secretary shall require (1) the manufacturer of such fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of such additive or additives in the fuel; and the purpose in the use of such additive; and (2) the manufacturer of any such additive to notify him as to the chemical composition of such additive or additives as indicated by compliance with clause (1) above, the recommended range of concentration of such additive, if any, the recommended purpose in the use of such additive, and to the extent such information is available or becomes available, the chemical structure of such additive or additives. Upon compliance with clauses (1) and (2), including assurances that any change in the above information will be provided to the Secretary, the Secretary shall register such fuel additive.

62 Stat. 791.

"(c) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (b), which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

Violations;
penalties.

"(d) Any person who violates subsection (a) shall forfeit and pay to the United States a civil penalty of \$1,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Secretary may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection, and he shall have authority to determine the facts upon all such applications.

"(e) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

"NATIONAL EMISSIONS STANDARDS STUDY"

Report to
Congress.

"SEC. 211. (a) The Secretary shall submit to the Congress, no later than two years after the effective date of this section, a comprehensive report on the need for and effect of national emission standards for stationary sources. Such report shall include: (A) information regarding identifiable health and welfare effects from single emission sources; (B) examples of specific plants, their location, and the contaminant or contaminants which, due to the amount or nature of emissions from such facilities, constitute a danger to public health or welfare; (C) an up-to-date list of those industries and the contaminant or contaminants which, in his opinion, should be subject to such national standards; (D) the relationship of such national emission standards to ambient air quality, including a comparison of situations wherein several plants emit the same contaminants in an air region with those in which only one such plant exists; (E) an analysis of the cost of applying such standards; and (F) such other information as may be appropriate.

"(b) The Secretary shall conduct a full and complete investigation and study of the feasibility and practicability of controlling emissions from jet and piston aircraft engines and of establishing national emission standards with respect thereto, and report to Congress the results of such study and investigation within one year from the date of enactment of the Air Quality Act of 1967, together with his recommendations.

"DEFINITIONS FOR TITLE II

"SEC. 212. As used in this title—

"(1) The term 'manufacturer' as used in sections 203, 206, 207, and 208 means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

"(2) The term 'motor vehicle' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

"(3) The term 'new motor vehicle' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term 'new motor vehicle engine' means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser.

"(4) The term 'dealer' means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

"(5) The term 'ultimate purchaser' means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

"(6) The term 'commerce' means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

"TITLE III—GENERAL

"ADMINISTRATION

"SEC. 301. (a) The Secretary is authorized to prescribe such regulations as are necessary to carry out his functions under this Act. The Secretary may delegate to any officer or employee of the Department of Health, Education, and Welfare such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

"(b) Upon the request of an air pollution control agency, personnel of the Public Health Service may be detailed to such agency for the purpose of carrying out the provisions of this Act. The provisions of section 214(d) of the Public Health Service Act shall be applicable with respect to any personnel so detailed to the same extent as if such personnel had been detailed under section 214(b) of that Act.

"(c) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Secretary.

"DEFINITIONS

"SEC. 302. When used in this Act—

"(a) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(b) The term 'air pollution control agency' means any of the following:

"(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this Act;

"(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

"(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

"(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

"(c) The term 'interstate air pollution control agency' means—

"(1) an air pollution control agency established by two or more States, or

"(2) an air pollution control agency of two or more municipalities located in different States.

"(d) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"(e) The term 'person' includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

"(f) The term 'municipality' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

58 Stat. 690.

42 USC 215.

60 Stat. 423.

"(g) All language referring to adverse effects on welfare shall include but not be limited to injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to transportation.

"OTHER AUTHORITY NOT AFFECTED

"SEC. 303. (a) Except as provided in subsection (b) of this section, this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Secretary or any other Federal officer, department, or agency.

"(b) No appropriation shall be authorized or made under section 301, 311, or 314 of the Public Health Service Act for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this Act.

58 Stat. 691;
80 Stat. 1181,
1190.
42 USC 241, 243,
246.

"RECORDS AND AUDIT

"SEC. 304. (a) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

"COMPREHENSIVE ECONOMIC COST STUDIES

"SEC. 305. (a) In order to provide the basis for evaluating programs authorized by this Act and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Secretary, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this Act or applicable State law. The Secretary shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

Report to
Congress.

"(b) The Secretary shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this Act

Personnel
study.

Report to President and Congress.

and other programs for the same purpose as this Act; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

"ADDITIONAL REPORTS TO CONGRESS

"SEC. 306. Not later than six months after the effective date of this section and not later than January 10 of each calendar year beginning after such date, the Secretary shall report to the Congress on measures taken toward implementing the purpose and intent of this Act including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this Act; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to title II of this Act; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this Act; and (10) the reports and recommendations made by the President's Air Quality Advisory Board.

"LABOR STANDARDS

"SEC. 307. The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a-276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

63 Stat. 108.

"SEPARABILITY

"SEC. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

"APPROPRIATIONS

"SEC. 309. There are hereby authorized to be appropriated to carry out this Act, other than sections 103(d) and 104, \$74,000,000 for the fiscal year ending June 30, 1968, \$95,000,000 for the fiscal year ending

November 21, 1967

Pub. Law 90-148

81 STAT. 507

June 30, 1969, and \$184,300,000 for the fiscal year ending June 30, 1970.

"SHORT TITLE

"SEC. 310. This Act may be cited as the 'Clean Air Act'."

Approved November 21, 1967.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 728 (Comm. on Interstate & Foreign Commerce) and No. 916 (Comm. of Conference).

SENATE REPORT No. 403 (Comm. on Public Works).

CONGRESSIONAL RECORD, Vol. 113 (1967):

July 18: Considered and passed Senate.

Nov. 2: Considered and passed House, amended.

Nov. 9: Senate rejected House amendment; asked for conference.

Nov. 13: House insisted on its amendment and agreed to a conference.

Nov. 14: Senate and House adopted conference report.

